No. 22,670

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Appellants,

vs.

PACIFIC MARITIME ASSOCIATION, a California non-profit corporation, and INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, a labor organization,

Appellees.

APPELLANT'S OPENING BRIEF.

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I.
STATEMENT OF JURISDICTION.

Plaintiff's and appellants, International Longshoremen's and Warehousemen's Union, Local 13 (hereinafter referred to as "plaintiff" or "plaintiff, Local 13,") initially brought the within action by petition in the Superior Court of the State of California for the County of Los Angeles. The defendants and appellees, International Longshoremen's and Warehousemen's Union, (hereinafter referred to as the "international" or "International Union,") and defendant and appellees, Pacific Maritime Association (hereinafter referred to as "PMA,") each filed separate petitions for removal to the United States District Court. The separate petitions brought about two separate cases in the District Court which were subsequently consolidated in one case under number 65-1414-S and thereafter assigned to 65-1414 AAH.

An amended complaint was filed in the District Court which provided in substance that the plaintiff, Local 13 and the defendant, International Union were labor organizations under the provisions of the Labor Management Relations Act and the P.M.A. was an employer under the provisions of the Act. That a collective bargaining agreement existed that had been entered into between the P.M.A. and the International on behalf of and for the benefit of its locals and their members, including plaintiff, Local 13 and its members. [TR. pp. 65-109.]

The amended complaint further alleged that the P.M.A. blackballed a former Local 13 official, Pete Velasquez, then brought about arbitration proceedings against plaintiff before an area aribitrator who rendered an award and that the award was then appealed to the Coast Labor Relations Committee, who referred the matter to the Coast Arbitrator who rendered a

decision affirming the Area Arbitrator and deregistering a former official of plaintiff (Pete Velasquez) for activities allegedly carried out by Pete Velasquez when he was employed solely by plaintiff as an official of plaintiff, Local 13.

The amended complaint alleges that the Area Arbitration had by the P.M.A. in respect to charges brought against Pete Velasquez for matters allegedly occurring while he was solely employed by plaintiff as a union official were had *ex parte*. The complaint sets forth that the proceedings had before the Area and Coast Arbitrators were in excess of the powers of the arbitrators and were made and procured by corruption, fraud and undue means and with evident partiality on the part of the arbitrators, with an indifference to and manifest disregard for the facts, and upon grossly erroneous findings and conclusions and that the decisions and awards were void and should be vacated and set aside. [TR. pp. 72, 73.]

The complaint further sets forth that the aforesaid acts of the arbitrators were carried on as part of a connivance and conspiracy between the arbitrators and defendants to wrongfully modify Sec. 17.81 of the Collective Bargaining Agreement to apply its provisions to officers of plaintiff Local 13 and to penalize them for activities carried on as union officials. [TR. p. 73.] The complaint further brought in the International as a defendant on the ground that the International was united in interest with plaintiff and was unwilling to join in bringing the action. [TR. p. 67.]

The second cause of action realleged paragraphs I through XX of the first cause of action and set forth facts whereby it was alleged that the arbitrators' decisions and awards were void as being contrary to public policy as provided and made by the National Labor Policy of the United States of America and the policy

set forth in the Labor Management Relations Act, 29 U.S.C., Sections 157, 158, and 185. [TR. p. 67.]

The District Court had jurisdiction to hear the cause under Section 301 of the Labor Management Relations Act, 29 U.S.C., Section 185; having jurisdiction to hear the cause the District Court then had further jurisdiction to grant the remedies and relief provided for in the Arbitration Act, 9 U.S.C., Sections 1 through 14. Though not entirely necessary for the within proceedings, due to the connivance and conspiracy of the defendants and the subsequent deprivation of plaintiffs' members of their rights, the District Court had further and additional jurisdiction under 28 U.S.C., Sec. 1337.

This Honorable Court has jurisdiction by virtue of 28 U.S.C., Section 1291.

II.

STATEMENT OF THE CASE.

A. Background of the Cause.

1. Matters Preliminary to the Arbitration.

Plaintiff is an autonomous local of defendant International Union; plaintiff's "Constitution-By-Laws-General Rules" are attached to plaintiff's complaint as Exhibit "C". [TR. p. 86.] The officers of Local 13, which includes "Business Agents" (Day and Night) are set forth in Article II of the Constitution, commencing on page 5 with their duties being set forth in Article III, commencing on page 6. Among other matters, the duties of a business agent are as follows:

"Article III Duties of Officers

"Section 4. Business Agents:

"a. The Business Agents (Patrolmen) shall be the representative of the local in the loading and discharging of all vessels governed by our contract and of all other work under the jurisdiction of this Local." * * *

> "h. They shall perform such other duties as the Local may assign them, and at the expiration of their term, recall, removal or resignation, turn over to the Local all properties which they have in their possession that belong to this Local."

Defendants, P.M.A. and International Union entered into a Collective Bargaining Agreement, which is referred to as the Pacific Coast Longshore Agreement, a copy of which is attached to plaintiff's complaint as Exhibit "A". [TR. p. 53.] Paragraph 1, page 1, of the Agreement provides that the International Union entered into the Agreement:

> "* * * on behalf of itself and each and all of its longshore locals in California * * * and all employees performing work under the scope, terms, and conditions of this agreement."

The Collective Bargaining Agreement further provided penalties for misconduct of longshoremen working under the Agreement. The present litigation arises out of the application of one of the penalty provisions which is set forth as Section 17.81, commencing on page 75 of the Collective Bargaining Agreement with the applicable portions providing [TR. p. 53]:

> "17.81 all longshoremen shall perform their work conscientiously and with sobriety and with due regard to their own interest shall not disregard the interests of the employer. Any employee who is guilty of deliberate bad conduct in connection with his work as a longshoreman or through illegal stoppage of work shall cause the delay of any vessel shall be fined, suspended, or for deliberate repeated offense, cancelled from registration. * * *"

Section 1.71 of the Pacific Coast Longshore Agreement further provides:

> "1.71 The term 'longshoreman' as used herein shall mean any man working under this Agreement."

The cause before the District Court was to set aside an arbitration decision made against plaintiff Local 13 by the Area Arbitrator, Germain Bulcke, (Appendix I herein) and affirmed by the Coast Arbitrator, Sam Kagel, who, upon the decision, deregistered a former plaintiff Local 13 Business Agent, Pete Velasquez, from all future work under the Collective Bargaining Agreement. (Appendix II herein.) The P.M.A. represents the vast majority of the employers who employ longshoremen and members of plaintiff's local and the deregistration of Pete Velasquez was tantamount to excluding him from all work in the industry. [TR. p. 400, Velasquez pars. 17 and 18; TR. p. 394, Velasquez par. 3.]

Pete Velasquez was an official (Business Agent) of plaintiff from October, 1962 to October, 1964, except for the period of from June 20, 1964 to July 15, 1964, at which time he was suspended from office by the President and Executive Board of Plaintiff, Local 13 for his association with company officials and supervision. [TR. p. 395 Velasquez par. 3.] During his employment as Business Agent of Local 13, Velasquez did not engage in any function or employment under or pursuant to the Collective Bargaining Agreement (Pacific Coast Longshore Agreement), nor did he engage in any longshore activities. During such period of time his sole employment was pursuant to the "Constitution, By-Laws, and General Rules" of Local 13 as a salaried officer of the local. [TR. pp. 395, 396, Velasquez pars. 6, 7.]

Velasquez left office in October, 1964, due to the fact that under Article II, Section 3, of the "Constitution, By-Laws, and General Rules" and officer's tenure is limited to two terms (2 years) then he must be out of office for an equal period of time before being eligible to run for office again. However, to be able to again run for office, under Article IV, Section 1, Subd.

E of the Constitution, he must be an "active longshoreman in the industry." [TR. p. 394.]

During his tenure as an official of plaintiff Local 13, Pete Velasquez was engaged in carrying out his duties under the local's Constitution and By-Laws and the orders and directions of his superior, the President of plaintiff Local 13 and the policies and instructions of the President of defendant International Union. [TR. pp. 395-397, Velasquez pars. 7, 8 and 9.]

After Pete Velasquez left office of Local 13 in October, 1964, he returned to his prior employment as a longshoreman working as a winch driver in longshore Gang No. 55. [TR. p. 400, Velasquez par. 18.] Robert Carney was the senior member of Gang No. 55 and in charge thereof performing his duties as a hatch tender. [TR. p. 416, Carney par. 3.] As hatch tender Robert Carney was the safety man of the gang and among his duties included the administration and observance of the Pacific Coast Marine Safety Code. [TR. pp. 414-416, Carney pars. 1, 2 and 3.]

After Pete Velasquez returned to his employment two incidents arose. On November 23, 1964, Gang No. 55 was dispatched for employment with Jones Stevedoring Co. to work aboard the "SS HAI HSIN". When the gang reported to work it was "sold and shifted" to work aboard the SS MICHIGAN for Crescent Wharf and Warehouse Company. Gang No. 55 was thus sold and shifted to complete an eight (8) hour guarantee which terminated 3:00 A.M. November 24, 1964, and beyond which time the shifted gang was not required to work. [TR. pp. 416, 417, Carney pars. 3, 4 and 6.] Prior to 3:00 A.M. the gang boss, Robert Carney, was informed that the gang would be requested to work beyond 3:00 A.M. Mr. Carney then told the company's ship boss, Vern Richards, that "the gang was shifted only to finish our eight-hour day". The ship boss then

stated, "Do as you please." [TR. pp. 417, 418, Carney par. 7.]

When Carney started to advise the gang of the request to work over, the members started to request replacements. Pete Velasquez, who was at the time actively engaged in the driving of winches, was among the last to be informed of the request to work over, and he himself requested a replacement. The replacements arrived prior to 3:00 A.M. and the company refused to allow them to work and members of Gang No. 55 departed. [TR. p. 418, Carney, pars. 8 and 9.] Gang No. 80 was employed aboard the vessel in another hatch and was also asked to work extended time beyond 3:00 A.M. Gang No. 80 also called replacements and the company also refused to let Gang No. 80's replacements turn to and Gang No. 80 left the job. There was never any disciplinary action taken against any members of Gang No. 80 for calling replacements or failing to work an extended shift. [TR. pp. 418, 419, Carney pars. 10 and 11.]

The second incident arose after Gang No. 55 was dispatched to work aboard the SS PRESIDENT QUEZON on November 30, 1964. The gang commenced work in No. 4 hatch. On commencing work it was found that the brakes on the winch were defective and wouldn't hold a load, therefore the gang was shifted to another hatch while the winch was being repaired. [TR. p. 419, Carney pars. 11-13.]

Gang No. 55 again reported to work aboard the SS PRESIDENT QUEZON on the 1st day of December, 1964, and prior to 6:00 P.M. learned that the port boom of No. 4 hatch had been dropped, damaging the superstructure of the vessel and leaving physical evidence of the impact upon the boom. [TR. p. 419, Carney par. 14.] Robert Carney requested a static test of the boom, prior to its use, and the company advised him that they would call a safety inspector to check the boom

and the gang was put to work in No. 6 hatch. Tony Mignano, a Federal Safety Inspector, came aboard the vessel and looked at the boom. [TR. p. 420, Carney par. 15.]

During the 10:00 to 11:00 P.M. meal hour Germain Bulcke, the Area Arbitrator, came aboard the vessel and was told that the Federal Safety Inspector had been on board and said that the boom was safe as far as he could see but that there was no way that he could tell whether the boom was safe or not without a static test and had recommended that a static test be made. The Area Arbitrator first stated that he did not believe that the matter was arbitratable as he was not a safety engineer and should not have been called out. Thereafter, without even so much as a visual inspection of the boom, the Area Arbitrator ruled that the boom was safe. [TR. p. 420, Carney pars. 16 and 17.]

Robert Carney who was in charge of the gang and its safety, felt that the decision of the Area Arbitrator was improper and therefore offered to work the hatch using the boom on a swinging boom basis. The company refused the offer and Robert Carney then offered to have the gang work the hatch on any other manner other than use the damaged boom, or in the alternative to work any other hatch of the ship or that the gang would call replacements which were available and could be on the job in ten (10) minutes. The company superintendent, Mike Longmire, then made a telephone call, then had a conversation with Mr. Wallen, the ship boss, and then advised the Union's night business agent, Mr. Brady, that Gang No. 55 was fired. [TR. p. 421, Carney, pars. 19-21.]

The Company took the above action and discharged the gang after the 10:00 to 11:00 P.M. meal period, even though it was relatively easy to give the boom a static test and had the boom passed the test, the gang

could have been working on No. 4 hatch by 7:30 P.M. [TR. p. 420, Carney, par. 18.] The static test would have taken about forty-five (45) minutes and cost about $50.00. [Ans. to Interrogatory No. 7, TR. pp. 185 and 186.]

Harry Bridges, President of the defendant International, extended no assistance in the matter even though his previous instructions provided as follows:

> "Take the case cited by Bob Baker. Here is a man who has been on the job. He is on the winch and he is handling a big load. As that winch driver he figures those winches can't handle it. He is a hundred percent right. And some arbitrator (*even one of our own*) is going to come along and say 'As far as I am concerned it's safe'. It doesn't matter a damn. He is going to take that load and take a chance of hurting our people? Why, he ought to be run off the job! Any local that lets that happen is not doing its job. * * *"
>
> "* * * If there is anybody on the job being forced to work under unsafe conditions, that is our fault. It is not the shipowner's fault. They are bound to try it. It is our fault. And doggone it! Let's put a stop to it. * * *" [TR. p. 396, Velasquez par. 7.]

Further Section 11.41 of the Pacific Coast Longshore Agreement provides [TR. p. 53]:

> "11.41 Longshoremen shall not be required to work when in good faith they believe that to do so is to immediately endanger health and safety. Only in cases of bona fide health and safety issues may a standby be justified. The union pledges in good faith that health and will not be used as a gimmick. Supplement III sets forth the agreed procedure with respect to disputes on health and safety."

The following night, December 2, 1964, Mr. McEvoy who was in charge of defendant P.M.A. in the Wilmington-Long Beach area, stated to Mr. Robert Carney that, "We're" out to get Pete Velasquez and have him deregistered for the things he had done as the Union's Business Agent. When asked why, McEvoy stated, "Pete knows the contract too well." [TR. p. 421, Carney par. 22.] Pete Velasquez had, while in office, handled the disputes arising under the Pacific Coast Longshore Agreement and had won substantially all the disputes including substantially all of the arbitrations. [TR. p. 397, Velasquez par. 9.]

On the following day, December 3, 1964, two complaints were before the Joint Port Labor Relations Committee. One complaint being Company Complaint No. 289 filed by the employer, Marine Terminals, against Gang No. 55; the second complaint being UC 634 brought by the plaintiff Local 13 against the company, Marine Terminals Corporation, alleging wrongful discharge of Gang No. 55. Disagreement was reached on both complaints and the matters were referred to Joint Area Labor Relations Committee pursuant to Section 17.24 of the Collective Bargaining Agreement. [TR. p. 433, Johnston pars. 5 and 6.]

Section 17.11 of the Pacific Coast Longshore Agreement provides:

> "17.11 The parties shall establish and maintain, during the life of this Agreement, a Joint Port Labor Relations Committee for each port affected by this Agreement, four Joint Area Labor Relations Committees, and a Joint Coast Labor Relations Committee. Each of said labor relations committees shall be comprised of three or more representatives designated by the Union and three or more representatives designated by the Employers. Each side of the committee shall have equal vote."

Section 17.24 of the Collective Bargaining Agreement provides:

> "17.24 In the event that the Employer and Union members of any Joint Port Labor Relations Committee shall fail to agree upon any question before it, such question shall be immediately referred to at the request of either party to the appropriate Joint Area Labor Relations Committee for decision."

Immediately after the referral to the Joint Area Labor Relations Committee, defendant P.M.A.'s Southern California Area Manager, John D. McEvoy, made a motion that Pete Velasquez be deregistered. Attached to said motion was fifteen (15) charges made against Pete Velasquez. The Committee disagreed and the matter was referred to the Area Labor Relations Committee. John McEvoy then presented plaintiff Local 13 with a typewritten statement blacklisting Pete Velasquez from all employment through companies which were signatory to the Pacific Coast Longshore Agreement, until all cases against Pete Velasquez were resolved. Plaintiff objected to the blacklisting as being employer unilateral action which was in complete violation of the Pacific Coast Longshore Agreement. [TR. p. 434, Johnston pars. 8, 9, and 10.] The above complaints went as far back as April, 1959. (Appendix I, Bulcke award.)

Never before had a member of the Longshore industry been blacklisted or placed upon a non-dispatch list preventing him from working for all employers who were a party to the Collective Bargaining Agreement, and no member had ever remained on a non-dispatch list after a complaint against him had been processed through the Joint Port Labor Relations Committee. The defendant P.M.A. put their blacklisting into effect

and Pete Velasquez was prevented from obtaining further work. Plaintiff Local 13 then filed a further complaint objecting to the blacklisting and disagreement was reached on the complaint. The P.M.A. refused to waive the Joint Area Labor Relations Committee and allow the matter of the blacklisting to go to the Area Arbitrator for a ruling. [TR. pp. 435, 436, Johnston, pars. 14-17.]

A special Join Area Labor Relations Committee meeting was had December 8, 1964, with J. Paul St. Sure, President of defendant P.M.A. present and Harry Bridges, President of defendant International Union present. P.M.A. President, Paul St. Sure, stated that Pete Velasquez would not be reinstated unless Local 13 would agree to package all of the complaints against Pete Velasquez up and refer them directly to the *Coast Arbitrator* along with the employer's motion to deregister Pete Velasquez. This Local 13 refused to do and demanded that their complaint respecting the blacklisting of Pete Velasquez be referred to the *Area Arbitrator*. The P.M.A. refused to allow said complaint to go to the Area Arbitrator. [TR. p. 437, Johnston par. 20.]

Thereafter Paul St. Sure proposed that all complaints against Pete Velasquez be heard by the Joint Area Labor Relations Committee meeting of December 14, 1964, and if necessary then the complaints against Pete Velasquez would thereafter be presented to the Area Arbitrator and stated that only if plaintiff Local 13 would agree to the foregoing would Pete Velasquez be removed from the non-dispatch list. [TR. p. 437, Johnston par. 20.] In order that Pete Velasquez could be taken off the non-dispatch list and by reason of the P.M.A.'s then and past further harassment and coercion against plaintiff Local 13 which was acquiesced in by defendant International Union, including a long lock-out

of plaintiff Local 13 by defendant P.M.A., plaintiff agreed to the latter proposal. [TR. pp. 437, 438, 448 and 450, Johnston pars. 21, 22, 47, 48 and 55.]

The complaints were processed through the Joint Area Labor Relations Committee and the parties reached disagreement thereon. The defendant P.M.A. then referred the complaints to arbitration. [TR. p. 438, par. 23.]

2. The Arbitration.

The arbitration was commenced by defendant P.M.A. against plaintiff Local 13, the defendant P.M.A. having initiated proceedings before the area arbitrator.

The provision of the Pacific Coast Longshore Agreement strictly limits the powers of the arbitrators, Section 17.52 provides in part:

> "Powers of the arbitrator shall be limited strictly to application and interpretation of the agreement as written. * * *"

Section 17.53 provides in part:

> "Arbitrators' decisions must be based upon the showing of facts and their application under the specific provisions of the written agreement and be expressly confined to, and extend only to, the particular issue in dispute."

Section 17.62 provides in part:

> "The arbitrator shall act with his powers limited strictly to the application and interpretation of the Agreement as is written."

The arbitration was commenced on January 4, 1965, before the Area Arbitrator Germain Bulcke and a record of the proceedings were made by a Certified Shorthand Reporter. Plaintiff in opposition to defendants' motion for summary judgment introduced into evidence a copy of the reporter's transcript as Exhibit "6A 6B and 6C."

Plaintiff Local 13 participated in the arbitration of the first four (4) complaints which were subsequently decided in the opinion and decision of the Area Arbitrator as cases numbered 1, 2, 3, and 4 respectively. The cases in which Local 13 participated involved Pete Velasquez as a working Longshoreman. [TR. pp. 438-439, Johnston par. 24.] However, Local 13 refused to arbitrate or submit to arbitration any of the remaining complaints as each of said complaints involved Velasquez in his capacity as a duly elected official of Local 13 and while he was solely employed by and paid by plaintiff, Local 13 and at a time when he was not performing any function under the Pacific Coast Longshore Agreement either as a Longshoreman, employee or otherwise. (Appendix I, Bulcke p. 2.) [TR. p. 439, Johnston par. 25.]

Local 13 refused to arbitrate or submit the remaining complaints to arbitration on the stated ground that to arbitrate the complaints was against both Federal and State Laws and that arbitration regarding a union official did not come under Section 17.81 of the Pacific Coast Longshore Agreement. [Ex. 6; TR. p. 439, par. 36.]

After Local 13 refused to arbitrate the remaining eight (8) cases which involved Velasquez as a Union official and during the evening of January 4, 1965, the then President of Local 13, Curt Johnston, who had stated the position of the Local and had refused to arbitrate, received a phone call from the Area Arbitrator Germain Bulcke. During the call Bulcke attempted to induce Johnston to continue and arbitrate the remaining eight (8) complaints against Pete Velasquez. During the conversation the Area Arbitrator stated, "but it would look better even though we both know Velasquez is guilty and heaven knows I have tried to help this guy, if you would be there to at least go through the mo-

tions". Johnston then told Bulcke that he couldn't go through the arbitrations as he didn't believe that Section 17.81 applied to union officials and that Bulcke did not have jurisdiction to proceed with the arbitration which would be against both Federal and State laws. [TR. pp. 439-440, Johnston par. 27.] The Area Arbitrator and the P.M.A. thereafter proceeded to arbitrate the remaining eight (8) cases *ex parte* without the consent or permission of plaintiff and against plaintiff's desire. [TR. pp. 440, 441, Johnston par. 29.]

Section 17.281 of the Pacific Coast Longshore Agreement provides:

> "17.281 Should either party fail to participate in any of the steps of the grievance machinery, the matter shall automatically move to the next higher level."

Section 17.282 of the Pacific Coast Longshore Agreement provides:

> "17.282 If the local grievance machinery becomes stalled or fails to work, the matter in dispute can be referred at once by either the Union or the Association to the Joint Coast Labor Relations Committee for disposition."

The P.M.A. did not avail themselves of the provisions of Section 17.281 and move the dispute to the next higher level or any of the complaints therein. Instead the P.M.A. induced the Area Arbitrator to proceed under Section 17.61 of the Agreement which provides (Appendix I, p. 2):

> "17.61 When a grievance or dispute arises on the job and is not resolved through the steps of 17.21 and 17.22, and it is claimed that work is not being continued as required by Section 11, a request by either party shall refer the matter to the Area Arbitrator (or by agreement of the Joint Coast

> Labor Relations Committee to the Coast Arbitrator) for his consideration in an informal hearing; such referral may be prior to formal disagreement in any Joint Labor Relations Committee or upon failure to agree on the question in the Joint Area Labor Relations Committee. Such hearing may be ex parte if either party fails or refuses to participate, provided that the arbitrator may temporarily delay an ex parte hearing to permit immediate bona fide efforts to settle an issue without a hearing."

Such a procedure as set forth in Section 17.61 provides for on-the-job arbitration when the work is not proceeding as required by Section 11. The Area Arbitrator took such action even though the alleged eight (8) complaints involved matters that had transpired long before the arbitration, and had already been through the Joint Port and Area Labor Relations Committees. The Area Arbitrator proceeded *ex parte* even though there was no contention or issue in respect to work proceeding as required by Section 11 and there could be no such issue as the complaints involved matters which had transpired long before the date of the arbitration and did not and could not involve work that was proceeding. [TR. p. 441, Johnston pars. 30 and 31.]

The Area Arbitrator rendered his "opinion and De cision" February 12, 1965, embodying all complaints in one "Opinion and Decision" but deciding each case therein separately. (Appendix I.) The decision in respect to complaint No. 212 (Case No. 1) found Pete Velasquez not guilty. In respect to complaints numbered E.C.61 and E.C.386 (Case No. 2) the Arbitrator found that the complaints did not support the employer's contention. That in respect to the remaining ten (10) complaints, the Area Arbitrator found Pete

Velasquez guilty (Cases 3 through 12). The ten (10) cases included two complaints against Pete Velasquez when he was employed as a Longshoreman, complaint No. E.C.373, Case No. 3, and complaint No. E.C.363, Case No. 4.

Case No. 3, E.C.373, involved the matter of the SS PRESENT QUEZON and Case No. 4, E.C.363, involved the matter of the SS MICHIGAN. Said matters having previously been set forth as the two events which transpired shortly after Pete Velasquez left office as a union official. The remaining eight (8) cases of which Velasquez was found guilty were each cases involving Velasquez as a union official a fact that was clearly shown in the Area Arbitrator's decision. (Appendix I, Bulcke Decision pp. 8-16.) [TR. p. 614, Court Finding No. 12.]

Section 17.261, page 67, of the Pacific Coast Longshore Agreement provided as follows:

> "17.261 Any decision of a Joint Port or Joint Area Labor Relations Committee or of an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, if the Joint Coast Labor Relations Committee cannot agree, *to the Coast Arbitrator, for review).* * * *" (Emphasis added.)

The opinion and decision of the Area Arbitrator was then appealed to the Joint Coast Labor Relations Committee which disagreed on the matter and referred the matter to the Coast Arbitrator Sam Kagel, which was the final step in the grievance procedure. [TR. p. 442, Johnston par. 33; TR. p. 615, Court Finding No. 15.]

Section 17.15 of the Pacific Coast Longshore Agreement provides:

> "17.15 The grievance procedure of this Agreement shall be the exclusive remedy with respect to any disputes arising between the Union or any person working under this Agreement or both, on the one hand, and the Association or any employer acting under this Agreement or both, on the other hand, and no other remedies shall be utilized by any person with respect to any dispute involving this Agreement *until the grievance procedure has been exhausted.*" (Emphasis added.)

The Union's prior complaint, U.C. 634, regarding the blacklisting of Pete Velasquez was heard before the Area Arbitrator. The Area Arbitrator in his opinion and decision held that the placing of Pete Velasquez on the non-dispatch list was a violation of Section 17.15 of the Pacific Coast Longshore Agreement and made an award to Pete Velasquez for his loss of earnings. [TR. pp. 442, 443, Johnston par. 35.]

After the opinion of the Area Arbitrator and prior to the hearing of the Coast Arbitrator, the President of the defendant International, Harry Bridges, stated to Pete Velasquez that he (Velasquez) was done, finished, and all washed up and he might as well know it and that if the issue of deregistration got to the Coast Arbitrator that he was done, that his only hope was himself Bridges, with Bridges finishing by telling Velasquez. "You're through, you're all washed up." [TR p. 447, Johnston par. 45.]

At hearings before the Coast Arbitrator it was the procedure that the International Union conduct the Union's portion of the hearing on behalf of the Local. [Ex. 7 transcript Coast Arbitration; Court Finding Nos. 15, 16, TR. p. 615.] The decision of the

Coast Arbitrator was based on the record of the proceedings had before the Area Arbitrator and the Area Arbitrator's decision. [Ex. 7, pp. 4-7.] The spokesman for the International Union was Link Fairley. [Ex. 7, p. 2.] During the hearing, the International President, Harry Bridges, acquiesced in the employers' position that Section 17.81 of the Pacific Coast Longshore Agreement applies to union officials. [Ex. 7, pp. 10-13; Ex. 7, p. 3, lines 14-25.]

This statement was made by Harry Bridges even though such a position had never been taken before [Ex. 7, p. 15, lines 3-6; TR. p. 445, Johnston par. 42] and such an interpretation had never been previously given to the section or approved by the membership, nor had an official even been previously charged under the section though stronger occasions had previously arisen for such a charge. [TR. p. 445, Johnston par. 46.]

The Coast Arbitrator Sam Kagel rendered his "Opinion and Decision" June 29, 1965, deregistering Pete Velasquez from all employment under the Pacific Coast Longshore Agreement. (Appendix II, p. 6.) Subsequent thereto and on or about the 23rd or 24th of August, 1965, the President of defendant International Union, Harry Bridges, stated to Sam Puccio, Local 13's Vice-president, that they had two arbitrations going and they had a deal working on the arbitration involving the belly-packing sacks matter and the Pete Velasquez case and they had to sacrifice Pete Velasquez to gain the belly-packing sacks issue. [TR. p. 424, Puccio.] Both awards had come down at the same time and the decision of the belly-packing award was before the lower court. [TR. pp. 426-430, Ex. Puccio aff.]

When the Coast Arbitrator Sam Kagel rendered his decision he deregistered Pete Velasquez based not on

the two (2) matters arising out of Velasquez' employment as a Longshoreman (Appendix I cases 3 and 4) but on the two matters combined with the complaints arising out of alleged activities of Velasquez as a union official. (Appendix II, p. 6, Comment on award.) The Coast Arbitrator had before him the record before the Area Arbitrator including the reporter's transcript of the proceedings. [Ex. 7, p. 6, lines 15-16.]

Section 17.82 of the Pacific Coast Longshore Agreement provided:

> "17.82 The Joint Port Labor Relations Committee has the power and duty to impose penalties on longshoremen who are found guilty of stoppages of work, assault, refusal to work cargo in accordance with the provisions of this Agreement, or who leave the job before relief is provided, or who are found guilty of pilfering or broaching cargo or of drunkenness or who in any other manner violate the provisions of this Agreement or any award or decision of an arbitrator."

The Coast Arbitrator levied the penalty of deregistration against Pete Velasquez. This was done even though at all times prior thereto the penalties were levied by the Joint Port Labor Relations Committee after a finding of guilt by the Area Arbitrator; neither the Area nor the Coast Arbitrator having the power to levy penalties and the Coast Arbitrator being restricted to a review on appeal. [TR. p. 445, Johnston par. 41.]

The effect of the "Opinion and Decision" of the Coast Arbitrator, Sam Kagel, was two-fold: the former official Pete Velasquez was severely damaged by his deregistration among other matters by loss of work and pension rights and plaintiff Local 13 and its members were further severely damaged by the effect of the

opinion and decision upon the ability of the Local to maintain its function as a Union and administer the Collective Bargaining Agreement. Defendant P.M.A. has and continues to use said opinion and decision to file and threaten to file complaints against officials of Local 13 and deregister them for activities carried on solely in their official capacities and while solely employed by the Union in administering the Collective Bargaining Agreement. Such attempted enforcement of the opinion and decision has the effect of harassing and coercing officials in carrying out their duties and the membership in their right to bargain collectively through officials of their own choosing and to have their rights protected. [TR. pp. 446-447, Johnston par. 44; TR. pp. 412-413, Leonard aff.]

Defendant P.M.A. has instructed the dispatchers that Pete Velasquez is not to be dispatched to any employment under the Pacific Coast Longshore Agreement and has therefore deregistered him. This has prevented Pete Velasquez from again running for office, has deprived him from his welfare, pension and mechanization fund rights, seniority rights, and from working for employers who filed no charges against him. The Pacific Coast Longshore Agreement is so extensive that it covers nearly all of the employment available to the members of plaintiff Local 13, therefore the deregistration of Pete Velasquez was tantamount to depriving him from all employment in the longshore industry. [TR. p. 446, Johnston par. 43; TR. pp. 394, 395 and 400, pars. 4, 14, 15, 16, 17, 18.]

After the decision of the Coast Arbitrator deregistering Pete Velasquez, The Area Arbitrator telephoned Curt Johnston and suggested that he try to negotiate a deal to see if Harry Bridges could have Velasquez reinstated and suggested that he might have to have some type of agreement that Velasquez would never

run for office again to help induce the employer to reinstate him. [TR. pp. 443, 444, Johnston par. 37.]

The decisions of the Area and Coast Arbitrators are set forth respectively as Appendix I and II of this brief and are also contained in the transcript on file. [TR. p. 87; TR. p. 103.]

3. Additional Background of Case.

The foregoing summary of the background is supported by the affidavits and evidence in much more extensive and detailed manner than set out above and includes additional factors. The more detailed evidence in support of plaintiff's complaints and assignment of errors is more fully set forth in respect to the arguments to which said evidence is applicable.

The foregoing is more particularly evident in respect to the connivance and conspiracy entered into between the defendants to procure the deregistration of Pete Velasquez and cause the damage previously set forth. The facts of said connivance and conspiracy being referred to under Point I of the argument hereafter set forth, and are set forth in Appendix VI herein with a summary of the ten (10) cases in which Velasquez was found guilty being set forth in Appendix V herein. Said cases being demonstrative of their relatively minor nature and the participation of the P.M.A. and the Area Arbitrator in bringing about the situations out of which the cases arose.

B. Procedural Steps.

Plaintiff's remedy under the grievance procedure was exhausted June 29, 1965, when the Coast Arbitrator handed down his opinion and decision and deregistered Pete Velasquez. [TR. p. 615, Court Finding No. 15.]

Plaintiff brought a petition in the State Court to set aside the opinion and decisions of both the Area and

Coast Arbitrators. The petition was filed September 1965, and alleged substantially the same facts as are contained in plaintiff's amended complaint. (Supplement to the Record.) [TR. pp. 65-109.] The petition was brought under California *Civil Code Section* 1286.2 which provides a remedy similar to that of the Federal Arbitration Act contained in *Title 9, Section 10 U.S.C.*

Each of the defendants filed separate petitions for removal to the United States District Court resulting in two District Court cases, to wit: 65-1414-S and 65-1420-S, before the Honorable Albert Lee Stephens, Jr., District Judge. A motion was made to consolidate the cases and the motion was granted and the cases were consolidated under the lower number 65-1414-S. [TR. p. 64.]

Defendant P.M.A. filed a motion to "Strike the Petition, to Strike Portions of Petition and to Dismiss the Petition for Want of Jurisdiction in any Court." Plaintiff filed an amended complaint which basically contained the same allegations set forth in the petition; however, in the amended complaint the allegations were set forth in two (2) causes of actions. [TR. pp. 65-76.] Thereafter, plaintiff P.M.A. filed a moion to Strike and Dismiss the Amended Complaint and Portions Thereof. [TR. pp. 115, 116.] The Honorable Albert Lee Stephens, Jr., District Judge, on March 15, 1966, denied the motion. [TR. p. 125.]

Defendant International filed its answer to the amended complaint. [TR. pp. 110, 111.] Defendant P.M.A. filed its answer to the amended complaint and filed a cross-complaint against defendant International Longshoremen's and Warehousemen's Union and an amended Counter-claim against Plaintiff Local 13 seeking to have the arbitration opinions and decisions confirmed by the Court. [TR. pp. 126-142.] Plaintiff Local 13 answered the Counter-claim setting forth defenses to

confirmation which were in substance similar to the matters set forth in plaintiff's amended complaint as grounds to have the opinions and decisions set aside. [TR. pp. 291-295.]

By order of Court filed July 5, 1966, the previously consolidated matters were transferred to the calendar of the Honorable A. Andrew Hauk, District Judge, redesignating the matters 65-1414-AAH and 65-1420-AAH. Interrogatories were submitted to plaintiff and answers were filed thereto. [TR. pp. 181-236.] Requests for admissions were made by defendant P.M.A. and directed to plaintiff. Plaintiff filed answers to the majority of the requests and objections to the remainder. [TR. pp. 238-256.]

A hearing was had upon the objections and said objections were sustained in part and overruled in part. [TR. pp. 262-263.] Plaintiff filed additional answers answering the requests for admissions to which the objections were overruled.

A pre-trial conference order was lodged with the court on April 4, 1967 [TR. pp. 297-329.] A motion for summary judgment was filed April 6, 1967 and set for hearing on April 17, 1967, at 10:00 a.m., before the Honorable A. Andrew Hauk, District Judge. The motion for summary judgment was filed jointly in one document by both defendants P.M.A. and International Union. Neither defendant filed documents or evidence in support of the motion (other than their memorandum); the motion was based on the memorandum of ponts and authorities filed with their notice of motion and motion, and upon the records, pleadings, papers

and documents previously filed in this action. [TR. pp. 330-331.]

Plaintiff Local 13 filed its memorandum in opposition to motion for summary judgment together with affidavits, transcripts and answers to interrogatories as follows:

Affidavit of Pete Velasquez, Exhibit 1.
Affidavit of Curt Johnston, Exhibit 2.
Affidavit of Sam Puccio, Exhibit 3.
Affidavit of Patrick Leonard, Exhibit 4.
Affidavit of Robert Carney, Exhibit 5.
Area Arbitration January 4, 1965, Transcript, Ex. 6-A.
Area Arbitration January 5, 1965, Transcript, Ex. 6-B.
Area Arbitration January 6, 1965, Transcript Ex. 6-C.

Coast Arbitration April 28, 1965, Transcript, Ex. 7.

Exhibits (1) through five (5), together with a copy of the opinions and decisions of both the Area and Coast Arbitrator are contained in the Transcript filed in the above matter, as are defendants' answers to the interrogatories.

The matter of the motion for summary judgment came on for hearing on April 17, 1967, with extensive argument on the part of Plaintiff. [TR. p. 451.] On April 25, 1967, the Court made an order for summary judgment in favor of defendants and directing the preparation of findings of fact, conclusions of law and summary judgment to be submitted to the Court within 30 days with 15 days' leave granted to plaintiff to object thereto. [TR. pp. 452-455.] Defendant P.M.A. submitted findings of fact, conclusions of law and a form

of summary judgment which was lodged with the lower Court. Plaintiff Local 13 filed its objections thereto, together with an eighty-seven (87) page memorandum in support of the objections. [TR. pp. 550-556; TR. pp. 458-549.]

The lower Court did not adopt or sign the findings of fact, conclusions of law or judgment submitted by defendant P.M.A. and prepared and filed on December 20, 1967, its own findings of fact, conclusions of law and judgment. [TR. pp. 606-692.] The plaintiff Local 13 thereafter on January 15, 1968, filed its notice of appeal from said judgment. [TR. pp. 698, 699.]

C. The Order for Summary Judgment.

The lower Court made its Findings of Fact and Conclusions and thereupon made its Order for Summary Judgment as follows [TR. p. 639]:

"ORDER

"By reason of the foregoing Decision, Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that judgment be entered herein granting summary judgment against plaintiff and in favor of defendants upon the amended complaint herein, dismissing said amended complaint on the merits and confirming and enforcing the Opinion and Decision of Sam Kagel, Coast Arbitrator, dated June 29, 1965.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 20, 1967.

/s/ A. Andrew Hauk
A. Andrew Hauk
United States District Judge"

III.
SPECIFICATIONS OF ERROR.

1. Plaintiff contends it was error for the District Court to grant summary judgment against plaintiff and in favor of defendants confirming and enforcing the opinion and decision of the Coast Arbitrator, Sam Kagel, and to dismiss plaintiff's complaint on the merits, in that said complaint set forth claims upon relief could be granted because:

(a) Grounds were alleged setting forth that the opinions and decisions of the arbitrators were contrary to public policy and the national labor policy.

(b) Grounds were alleged setting forth that decisions and opinions of the Arbitrators should be vacated and set aside under the grounds provided by the Arbitration Act, 9 U.S.C., Section 10, including therein the grounds of fraud, corruption, undue means, evident partiality by the arbitrators and that the arbitrators exceeded their powers.

(c) Grounds were alleged whereby the decisions and opinions of the arbitrators were a result of a connivance and conspiracy with defendants and violated the duty of fair representation owed by defendant to plaintiff's member, Pete Velasquez.

(d) The opinions and decisions of the arbitrators were a manifest disregard for both the law and the collective bargaining agreement.

(e) That competent facts were set forth and introduced as to each and all of the above matters set forth in subdivisions a, b, c, and d, hereof and the lower court erred in not finding and concluding upon the facts as follows:

(1) That the arbitrators decisions were a result of a connivance and conspiracy between the arbitrators and defendants.

(2) That the arbitrators decisions were obtained by undue means.

(3) That the arbitrators decisions were a result of fraud.

(4) That the arbitrators exceeded their powers and jurisdiction.

(5) That the arbitrators demonstrated evident partiality against defendant and defendants member, Pete Velasquez.

(6) The arbitrators decisions were a result of corruption on the part of the arbitrators.

(7) That the arbitrators opinions and decisions were against public policy and the national labor policy.

(8) That defendant International Union violated its duty of fair representation owed to defendand and defendants member, Pete Velasquez, and said violation was participated in by defendant P.M.A. as part of the connivance and conspiracy.

(9) Finding that the opinions and decisions of the arbitrators constituted a discharge for union activities and concluding that the opinions and decisions were violative of the provisions of Sections 7 and 8 (a) (1) of the Labor Relations Act.

(10) Finding that the arbitrators opinions and decisions were a means for the employer P.M.A. to dominate and coerce plaintiff, Local 13, and interfere with the administration of plaintiff local and deprive the membership of representation of its own choosing and has been so used by defendant P.M.A. and therefore concluding that the opinions and decisions of the arbitrators were violative of Sections 7 and 8 (a) and (1) and (2) of the Labor Management Relations Act.

(11) Finding that the arbitrators opinions and decisions constituted an award of damages against

a union official and therefore concluding that the opinions were violative of Section 301 of the Labor Management Relations Act.

(12) Finding that the arbitrators decisions were an unauthorized modification of the collective bargaining agreement contrary to the terms of Section 22.1 thereof, and concluding that the opinions were violative of Section 8 (d) (1), (2), and (3) of the Labor Management Relations Act.

(13) Finding that the arbitrators did not interpret the collective bargaining agreement as written.

(14) Finding that the arbitrators did not base their opinions and decisions upon facts as they applied to the collective bargaining agreement as written.

(15) Finding that the opinions and decisions of the arbitrators were not adequately grounded in the collective bargaining agreement.

(16) Finding that Section 17.81 of the collective bargaining agreement did not include and apply to union officials.

(17) Finding that the Area Arbitrator proceeded to arbitrate cases 5 through 12 ex-parte in violation of the collective bargaining agreement in excess of his powers and jurisdiction.

(18) Finding that the collective bargaining agreement was a trade agreement and that union officials were not employed thereunder and issues in respect to union officials were not arbitrable.

(19) That plaintiff, Local 13, did not consent to and refused to arbitrate cases 5 through 12.

(20) That the arbitrators opinions and decisions were arrived at by and with a manifest infidelity by the arbitrators to their obligations.

(21) That at the time of the alleged cases number 5 through 12 which appear in both the Area Arbitrator and Coast Arbitrators opinion and decision plaintiff's member, Pete Velasquez, was solely employed by plaintiff and was not performing any service or function under the Pacific Coast Longshore Agreement as an employee or otherwise.

(22) That plaintiff's member, Pete Velasquez, was damaged by the arbitrators opinions and decisions by loss of, seniority, employment, pension rights, welfare rights and loss of payment present and future from the ILWU-PMA Mechanization fund.

(f) The lower court erred in not concluding upon the foregoing facts that plaintiff was entitled to judgment setting aside the opinions and decisions of the Area and Coast Arbitrator.

2. The lower Court further erred in its findings and conclusions as hereinafter set forth, the findings complained of being contrary to fact as introduced in opposition to the motion for summary judgment and the conclusions complained of being both contrary to fact and law.

(a) The lower court erred in its conclusions number II which provided as follows:

"The award of the Coast Arbitrator, the award of the Area Arbitrator, as well as the decisions rendered throughout all stages of the grievance machinery were and are in complete accordance with the terms of the collective bargaining agreement between employer and union, "Pacific Coast Longshore Agreement, 1961-1966," particularly the terms governing the grievance-arbitration procedure.

Each award and decision, "reached after proceeding adequate under the agreement, is final and binding upon the parties, just as the contract says it is." *Humphrey v. Moore,* 375 U.S. 335, 351 (1964) relying upon *Drivers Union v. Rose & Co.,* 372 U.S. 517, 519 (1963).

(b) The lower court erred in its conclusion number III which is basically a four (4) page repetition of conclusion number II with the additional erroneous provisions as follows:

"Nowhere in the record can we find any support for plaintiff's attack upon the integrity of the ILWU and of the procedures which led to the Coast Arbitrator's award and the Area Arbitrator's award, * * * Nowhere is there a factual statement, claim or allegation of fraud, deceitful action or dishonest conduct."

"The record does show that the ILWU fought on behalf of Velasquez and Local 13 against PMA in the five steps of the grievance procedure vigorously and at times even vituperatively, but always valorously and valiantly."

(c) The lower court erred in its fourteen page conclusion number IV and all the subdivisions thereof, said conclusion basically providing:

"The ILWU did not breach its duty of fair representation."

(d) The lower court erred in its conclusion number V which provides as follows:

"There is no genuine issue as to any fact material to the amended complaint herein. The amended complaint and each and every cause of action therein alleged fails to state a claim upon which relief can be granted. Plaintiff is not entitled to any relief under or by virtue to any order or judg-

ment setting aside or vacating the Coast Arbitrator's award dated June 29, 1965, or the Area Arbitrator's award dated February 13, 1965, or either of them."

(e) The lower court erred in its conclusion number VI which provides as follows:

"There is no genuine issue as to any fact material to the cross-claim and counter-claim. Defendant, Cross-Claimant and Counter-Claimant Pacific Maritime Association is entitled to relief under and by virtue of the cross-claim and counter-claim and, in particular, is entitled to an order and judgment confirming and enforcing the Coast Arbitrator's award dated June 29, 1963."

(f) The lower court erred in its finding numbered 19 which provides as follows:

"The allegations contained in Local 13's amended complaint, to the extent that they are inconsistent with the findings of fact herein, are untrue."

(g) The lower court erred in finding and concluding that the opinions and decisions of the Area and Coast Arbitrators were final and binding and not subject to being set aside.

3. The lower court erred in not considering the evidentiary matters introduced in the light most favorable to the plaintiff.

4. The lower court erred in not determining whether there was a triable issue of fact and upon such determination ordering and having a trial on said issues.

5. The lower court erred in finding upon and deciding facts where there were triable issues of fact.

6. The lower court erred in both finding and concluding both contrary to the law and facts as set forth herein in finding number 19, and finding number 18,

to the extent that the facts are not fully found or in the light most favorable to plaintiff, and in its conclusions number II, III, IV, V, and VI in their entirety.

7. The lower court erred in its finding number 18 and the subdivisions thereof, save and except subdivisions I and K. Said error being to the extent that said findings are not full and complete and found in the light most favorable to plaintiff.

8. The lower court erred in ordering summary judgment against appellant and in favor of appellees and in dismissing appellant's amended complaint and enforcing and confirming the opinion and decision of the Coast Arbitrator.

IV.
ARGUMENT.

A. Plaintiff Was Entitled to Relief Under the Arbitration Act 9 U.S.C. Section 10 and the Lower Court Erred in Not so Finding and in Concluding to the Contrary.

The present case arises out of arbitration proceedings had at the instance of the defendant P.M.A. and brought against plaintiff Local 13. Plaintiff arbitrated, before the Area Arbitrator, four (4) complaints involving a member of plaintiff Local 13 who was also a former official of plaintiff Local 13. The four (4) complaints arbitrated by plaintiff involved activities of Pete Velasquez as a union member employed as a longshoreman and working under the Collective Bargaining Agreement which is commonly referred to as the "Pacific Coast Longshore Agreement."

Plaintiff refused to arbitrate the remaining eight (8) complaints on the grounds that to arbitrate such cases was contrary to both Federal and State law and beyond the jurisdiction of the arbitrator and that Sec-

tion 17.81 of the Collective Bargaining Agreement did not apply to union officials. [TR. pp. 439, 440, Johnston pars. 25, 26, 27.] The remaining eight (8) complaints involved alleged activities of Pete Velasquez at a time when he was employed solely by plaintiff as an official of plaintiff Local 13 and serving in such capacity. However, defendant P.M.A. proceeded to arbitrate the remaining eight (8) complaints ex parte. [Finding No. 12, TR. p. 614; TR. p. 440, Johnston par. 9] (Appendix I, p. 2.)

After the close of the ex parte arbitration, the Area Arbitrator, Germain Bulcke, rendered an opinion and decision embodying all twelve (12) complaints. The opinion and decision is attached to plaintiff's complaint as Exhibit "D", is appended to the lower Court's judgment as "Appendix II" and is attached to this brief as "Appendix I". The opinion and decision of the Area Arbitrator found Velasquez guilty in ten (10) of the twelve (12) complaints filed against him. Two of the complaints for which Velasquez was found guilty concerned the "SS PRESIDENT QUEZON" and the SS MICHIGAN", these two (2) complaints involved Velasquez as a union member working under the Collective Bargaining Agreement and are set forth in the previous summary herein. The remaining eight (8) complaints for which Velasquez was found guilty involved activities of Velasquez which, if they transpired, were activities carried out when Velasquez was solely employed as a union official and carrying out his duties as an official of plaintiff Local 13. [Finding No. 12, TR. p. 614.] (Arbitrator's Opinion and Decision Appendix I herein.) In respect to the remaining eight (8) cases Velasquez was not employed in any manner as a longshoreman or under the Collective Bargaining Agreement [TR. pp. 434, 435, Johnston par. 11.]

Section 17.261, page 67 of the Collective Bargaining Agreement provided as follows [TR. p. 53]:

> "17.261 Any decision of a Joint Port of Joint Area Labor Relations Committee or of an Area Arbitrator claimed by either party to conflict with this Agreement shall immediately be referred at the request of such party to the Joint Coast Labor Relations Committee (and, *if the Joint Coast Labor Relations Committee cannot agree, to the Coast Arbitrator, for review).* * * *" (Emphasis added.)

The matter of the Area Arbitrator's Opinion and Decision was then referred to the Joint Coast Labor Relations Committee which did not agree on the matter and referred the matter for review before the Coast Arbitrator, Sam Kagel, which was the final step in the grievance procedure. [Finding No. 15, TR. p. 615.] The Coast Arbitrator on review rendered his Opinion and Decision and deregistered Pete Velasquez from all employment under the Collective Bargaining Agreement basing the deregistration on the complaints arising both out of his employment as a working longshoreman and his employment solely as a union official. The award of the Coast Arbitrator is attached to plaintiff's complaint as Exhibit "E" and appended to the judgment of the lower Court as "Appendix I" and is included in this brief as "Appendix II".

Section 17.15 of the Collective Bargaining Agreement provided [TR. p. 615]:

> "No other remedies shall be utilized by any person with respect to any dispute involving this agreement *until the grievance procedure has been exhausted.*" (Emphasis added.)

After plaintiff had exhausted its remedy under the grievance procedure, plaintiff filed a Petition in the State Court to set aside the opinions and decisions of the Area and Coast Arbitrators and the Petition was

removed to the District Court and was before the Court on the amended complaint at the time of the granting of the Summary Judgment which is appealed from herein.

The *Arbitration Act, 9 U.S.C. Section 10,* sets forth the grounds upon which an arbitration award may be vacated. Subdivision a., b., and d. of Section 10 provide grounds as follows:

> "(a) Where the award is procured by corruption, fraud, or undue means.
>
> "(b) Where there was evident partiality or corruption, in the arbitrators or either of them.
>
> "(d) Where the arbitrators exceed their powers, * * *"

The above grounds of *Title 9, Section 10* for the vacating of the arbitration award were set forth in plaintiff's complaint. [Pars. XXI-XXII, TR. pp. 72, 73.] However, the lower Court made no specific findings in respect to such ground except that the Court found that, "The award manifestly disregards the Collective Bargaining Agreement and the law" [Finding No. 18K, TR. p. 618] and further found that:

> "The allegations contained in LOCAL 13's amended complaint, to the extent that they are inconsistent with the Findings of Fact herein are untrue." [Finding No. 19, TR. pp. 618, 619.]

In the case of *Textile Workers Union v. Lincoln Mills of Alabama,* 353 U.S. 448, 77 S. Ct. 912 in deciding the issue as to the substantive law to be applied to effectuate Section 301 of the *Labor Management Relations Act,* at pages 455 and 456, the Court in referring to the legislative history of the Section and its former equivalent, Section 302, set forth:

> " 'It is my understanding that Section 302, the section dealing with equal responsibility under collective bargaining contracts in strike actions and

proceedings in district courts contemplates not only the ordinary law suits for damages but also such other remedial proceedings, both legal and equitable, as might be appropriate in the circumstances, in other words, proceedings could, for example, be brought by the employers, the labor organizations, or interested individual employees under the Declaratory Judgments Act in order to secure declarations from the Court of legal rights under the contract.

" 'Mr. Hartley. The interpretation the gentleman has just given of that section is absolutely correct.' 93 Cong. Rec. 2646-2656." (Emphasis added.)

The Supreme Court in affirming the decision, in *General Electric Company v. Local 205 United Electrical, Radio and Machine Workers of America,* 353 U.S. 547, 77 S. Ct. 921, at page 548 stated:

"* * * It then held that while Sec. 301 (a) of the Labor Management Relations Act of 1957, 29 USCA, Sec. 185 (a) gave the District Court jurisdiction of the cause, it supplied no body of substantive law to enforce an arbitration agreement governing grievances. But it found such a basis in *the United States Arbitration Act, which it held applicable to these collective bargaining agreements.*" (Emphasis added.)

In the case of *Metal Products Workers Union, Local 1645 v. The Torrington Company,* (D. Conn. 1965) 242 F. Supp. 813, affirmed (2nd Cir. 1966) 358 F. 2d 103. The Union filed its petition to set aside the award and the employer contended that the court lacked jurisdiction. The Court in holding that it had jurisdiction and could grant relief under the *Arbitration Act, 9 USCA,* stated at page 819:

"* * * Although the Arbitration Act itself confers no jurisdiction upon this Court, 'it does provide an additional procedure and remedy in the Federal Courts where jurisdiction already exists' * * *."

Where a court has authority to make an order for arbitration it has the authority to confirm the award or set it aside for irregularity, fraud or other defects. *Marine Transit Corporation v. Drefus,* (1932) 284 U.S. 263, 52 S. Ct. 1966. Futher it is proper to seek relief from an arbitration award regarding a collective bargaining agreement by complaint as required by the *Labor Management Relations Act,* basing the complaint on the grounds for relief set forth in the *Arbitration Act. Engineer's Ass'n. v. Sperry Gyroscope Co., Etc.,* 251 F. 2d 133.

Though the lower Court never further specifically found in respect to the above grounds it in substance concluded in its Conclusion No. III [TR. pp. 619-624] that the doctrines of the cases of *Humphrey v. Moore,* 375 U.S. 335; *Ford Motor Company v. Huffman,* 345 U.S. 330 and *Vaca v. Sipes,* 386 U.S. 171, provided the only form of remedy under which plaintiff could obtain relief. Plaintiff's relief thereby being restricted to relief granted when a union breaches its "statutory duty of fair representation toward a member" which breach "occurs only 'when a union's conduct towards a member of the collective bargaining unit is arbitrary, discriinatory, or in bad faith.'" Similarly the court concluded in its Conclusion No. IV K that the powers of the Court and plaintiff's recovery was limited by the cases cited therein. [TR. pp. 633-638 at 638.] Each of these conclusions were in error as being contrary to both the law and facts.

Defendant P.M.A. chose its forum, which was arbitration, and chose its adversary, which was plaintiff Local 13, the defendant International Union, was not a party to the arbitration. (Appendix I Area Arbitration Award.) [Ex. 6A. B., and C, Transcript of Arbitration.]

Plaintiff was before the lower Court fulfilling its duty to its membership as required by law and to do

so does not have to allege or prove any facts which a member might have to prove if plaintiff had not filed its action in the lower Court.

The duty of plaintiff has been recently set forth in the case of *International Union v. Hoosier Cardinal Corp.,* 383 U.S. 696, 86 S. Ct. 1107, 16 L. Ed. 192, where the Court allowed a union to sue in the United States District Court under Section 301 of the *Labor Management Relations Act* to recover wages and vacation pay on behalf of various members even though the union did not have an assignment of the claims. In recognizing that each employee's claim may rest on the existence of his individual contract of employment the Court at page 700 stated:

> " 'Any * * * labor organization may sue * * * in behalf of the employees whom it represents in the courts of the United States.' * * * And indeed, the unions standing to vindicate employee rights under Sec. 301 implements no more than the established doctrine that the union's role in the collective bargaining process does not end with the making of the contract."

Arbitration is merely a form of trial *American Locomotive Co. v. Chemical Research Corporation,* (6th Cir. 1949) 171 F. 2d 115, 120; *Hyman, et al. v. Rothberg Ex's et al.,* (2nd Cir. 1939) 101 F. 2d 262, 265. However, an arbitration award which was made is binding and authoritively creates rights by becoming part of the Collective Bargaining Agreement, unless the arbitration award is set aside. *Albin Stevedore Company v. Central Rigging and Contracting Corporation,* (9th Cir. 1962) 308 F. 2d 347.

Plaintiff is now before this Honorable Court as an adverse party to the arbitration conducted at the request of defendant P.M.A. and the only other party to such

proceedings. Plaintiff has pleaded two separate causes of action to set aside the arbitration award and is entitled to the remedies provided by the *Arbitration Act* 9 U.S.C. Sec. 10 to set aside or vacate arbitration awards. Said remedies are not to be confused with other and additional remedies given to a union member by cases such as *Humphrey v. Moore, supra,* or *Vaca v. Sipes, supra,* such additional remedies exist when a member's local fails or refuses to represent the member in good faith or actually represents the member in bad faith.

The present case has two separate facets in that the member and former union official who was deregistered has been damaged by the Opinions and Decisions of the arbitrators and plaintiff, Local 13, has also been further and grievously damaged by the opinions and decisions. This damage has been pleaded [pars. XIX, XXI, XXII, plaintiff's first cause TR. pp. 72, 73; pars. VI and VII, plaintiff's second cause TR. pp. 75, 76.] Said damage was fully proved and is set forth in Points D-3, D-4 and D-5 of this brief.

The further and more complete reasons as to why it was not necessary that plaintiff plead or prove "arbitrary, discriminatory or bad faith conduct" by a union against a member are set forth in Point "B" of this brief as are the reasons why plaintiff can avail himself as such pleadings of "arbitrary, discriminatory or bad faith conduct" which do exist. In this same regard the pleading of such arbitrary, discriminatory and bad faith conduct and the facts which compel judgment in favor of plaintiff as a result of such conduct are set forth in Point I of this brief.

The lower Court committed grievous error in making its Finding Number 19 and its Conclusions numbered III and IV and in thereby denying plaintiff the

relief to which plaintiff was entitled under the grounds set forth in the *Arbitration Act* and the application of the law to which plaintiff was entitled. That by reason of each of such errors the judgment of the lower Court should be reversed in its entirety.

B. The Doctrines of Humphrey v. Moore and Vaca v. Sipes, Are Not, as Urged by the Lower Court, Applicable in the Present Case, Except as to the Rights of the Member Under the Allegation of a Connivance and Conspiracy. And the Lower Court Erred in so Finding and Concluding.

The lower Court held the doctrines of *Humphrey v. Moore, supra,* 375 U.S. 335; *Ford Motor Co. v. Huffman,* 345 U.S. 330, and *Vaca v. Sipes,* 386 U.S. 171 to be applicable in the present case and that under facts found by the Court concluded that plaintiff should be denied recovery and that judgment should be rendered in favor of defendants. [Conclusion No. III, TR. pp. 619-624; Conclusion No. IV, TR. pp. 624-636.]

For the reasons previously set forth in Point "A" of this brief and the matters hereinafter set forth, it was not necessary to either plead or prove a "breach of the statutory duty of fair representation" or "arbitrary, discriminatory, or bad faith conduct" towards a member of the bargaining unit by the Union, as set forth by the lower Court from the cases of *Humphrey v. Moore, supra, Ford Motor Co. v. Huffman, supra,* and *Vaca v. Sipes, supra.*

The lower Court erred in that it commenced and continued with a nonexistent premise and failed to distinguish between factual situations. The lower Court assumed and in substance and effect asserted that the *Humphrey v. Moore* doctrine, *supra,* is a necessary ele-

ment to the setting aside of the arbitration decisions and opinions *and the exclusive ground upon which plaintiff must seek relief.* From the factual circumstances which exist and law applicable a "breach of the statutory duty of fair representation" or "arbitration discriminatory or bad faith conduct" are not necessary elements which plaintiff was required to either plead or prove. The case of *Humphrey v. Moore* does not involve the setting aside of an arbitration award by a participant or purport to abolish the statutory or other grounds for setting aside an arbitration award. *Humphrey v. Moore* is only an additional manner in which a member can obtain relief and which is applicable where his union in bad faith fails to seek the relief for him. The alleged doctrine is not a necessary element for the union itself to seek the relief.

The Court in the case of *Vaca v. Sipes,* 386 U.S. 171, at page 177 stated:

> "* * * The statutory duty of fair representation was developed over 20 years ago in a series of cases involving alleged racial discrimination by unions certified as exclusive bargaining representatives under the *Railway Labor Act,* see *Steel v. Louisville & N.R. Co.,* 323 U.S. 192; *Tunstall vs. Brotherhood of Locomotive Firemen,* 323 U.S. 210, and was soon extended to unions certified under the N.L.R.A., see *Ford Motor Co. v. Huffman, supra.*"

The answer to the lower Court's contentions in respect to its citation of the case of *Humphrey v. Moore, supra,* and the proposition for which the Court held it to stand is found in the reading of the case itself, which by the logic of the concurring opinion of Justices Goldberg and Brenan shows the case to have no application in respect to the relief sought by plaintiff

under the *Arbitration Act*. In the case of *Humphrey v. Moore, supra,* at pages 355 and 356, the Court stated:

> "* * * I read the decisions of this Court to hold that an individual employee has a right to a remedy against a union breaching its duty of fair representation—a *duty derived not from the collective bargaining contract but implied from the union's rights and responsibilities conferred by federal labor statutes* * * *" (Emphasis added.)
>
> In the same respect: *Vaca v. Sipes, supra,* at page 177.

In similar regard the case of *Woody v. Sterling Aluminum Products, Inc.,* (1965) 243 F. Supp. 755, 765, set forth:

> " 'The right to arbitrate under a collective agreement is not ordinarily a right incident to the employer-employee relationship, *but one which is incident to the relationship between employer and union.*' Proctor and Gamble Independent Union v. Proctor & Gamble Manufacturing Company, 2 Cir., 312 F.2d 181, 1 c. 185, Carey v. General Electric Company, 2 Cir., 315 F.2d 499." (Emphasis added.)

The relief which plaintiff sought in the lower Court was a right to relief derived from the Collective Bargaining Contract which arose out of employer-union relationship and which was predicated on an arbitration instituted by the employer against the plaintiff union. The suit brought by plaintiff in the lower Court was a suit brought by a union not by an employee member to enforce rights which the union had denied him.

The case of *Vaca v. Sipes, supra,* involved a refusal by the union to take a member's complaint to arbitration, pages 175, 176. In *Humphrey v. Moore, supra,* page 341, the issue was not arbitrable and in *Ford*

Motor Co. v. Huffman, the issue of arbitration was not involved. From the above cases it is clear that when a union, as plaintiff Local 13, has done in the present case, has proceeded in good faith to protect its own rights and at the same time the rights of one of its members, the alleged doctrine of *Humphrey v. Moore* is not a necessary element to plaintiff's recovery. Plaintiff is before the Court fulfilling its duty as required by law and to do so does not have to allege or prove any facts which a member might have to allege or prove if plaintiff had not filed its present action.

In the present case the arbitration was invoked by defendant P.M.A. who allegedly invoked a right to arbitrate under the Collective Bargaining Agreement and invoked the alleged right against plaintiff Local 13. (Appendix I.) [Exs. 6A, 6B and 6C.] This alleged right was invoked by defendant P.M.A. against plaintiff Local 13 by reason of the existent employer and union relationship as set forth in *Woody v. Sterling Aluminum Products, Inc., supra,* and not by reason of the union's responsibilities of fair representation owed to its members as set forth in *Humphrey v. Moore, supra,* which is a right of remedy of the member against the union.

In the present action defendant P.M.A. by cross and counter claims sought to have the arbitrations, opinions and decisions confirmed. The Court affirmed the opinions and decisions of the arbitrators and in so doing erred. Where the Court has the power to confirm an award it has the power to set it aside. The power to set the award aside was not limited to or affected by the doctrines of the *Humphrey* and *Vaca* cases, *supra,* but included the powers set forth in Point A, and subsequent points of this brief and which the lower Court failed to consider or find upon other than to find: "That the award manifestly disregards the Collective Bargaining Agreement and the law." [Find-

ings No. 18K. TR. p. 618.] However, due to the peculiar facts of the present case plaintiff, as is set forth in Point I hereof, was also entitled, on behalf of its member, Pete Velasquez, to any further relief pleaded and proved under the doctrines of the *Humphrey* and *Vaca* cases, *supra*.

C. The Collective Bargaining Agreement Was a "Trade Agreement" and Cases 5 Through 12 Were Not Arbitrable as There Was No Existing Arbitration Agreement Under Which They Could Be Arbitrated.

The Area Arbitrator arbitrated complaints five (5) through twelve (12) ex parte, after plaintiff refused to participate in an arbitration of such complaints. [Finding No. 12, TR. p. 614.] Complaints five (5) through twelve (12) were each complaints which allegedly arose out of activities of Pete Velasquez in administrating the Collective Bargaining Agreement under the directions of the membership and senior officials and at a time when he was solely employed by Local 13, was not employed as a longshoreman and was not performing any function under the Collective Bargaining Agreement. [TR. p. 395, Velasquez par. 5; TR. pp. 434, 435, Johnston par. 11; TR. p. 9, Johnston par. 25.]

As is clearly shown in page eight (8) through fifteen (15) of the Area Arbitrator's opinion and decision (Appendix I) defendant P.M.A. brought complaints five (5) through twelve (12) against Pete Velasquez in his capacity as an official of plaintiff Local 13, to wit, "business agent" and that the Area Arbitrator found the activities complained of to have been carried on by Pete Vevalsquez as the union's Business Agent. In similar regard the Coast Arbitrator deregistered Pete Velasquez for the activities which he allegedly carried out as the union's Business Agent. (Appendix II.)

Likewise the opinion and decision of the Area Arbitrator clearly showed that the arbitration was ex parte. [TR. p. 94.]

Prior to the arbitration of complaints five (5) through twelve (12) plaintiff Local 13 had refused to arbitrate said complaints on the ground that to arbitrate said complaints was against State and Federal laws, the arbitrator was without jurisdiction and Section 17.81 of the Agreement did not apply to union officials. [Ex. 6A pp. 124, 125, 127; Ex. 6B, p. 174; TR. pp. 439, 440, Johnston pars. 25, 26, 27.] The position of plaintiff was correct as to said complaints, there was no arbitrable issue as said complaints did not and could not arise under the Collective Bargaining Agreement and the Area Arbitrator lacked jurisdiction to predicate a penalty of deregistration or any other penalty on such cases.

In *MacKay v. Lowe's Inc.,* 182 F. 2d 170, 172 (9th Cir. 1950) in construing the effect of a collective bargaining agreement the court stated:

> "A collective bargaining agreement *is not a contract of employment.* Rather it is an agreement between the union and employer laying down certain conditions of employment which, it is contemplated, are to be incorporated in the separate contracts of hiring with each employee. * * *" (Emphasis added.)

In *N.L.R.B. v. Wooster Division of Borg-Warner Corporation,* (6th Cir. 1956) 236 F. 2d 898, 904, 905, the court stated:

> "* * * *The collective bargaining contract is not the contract of employment. It is rather the trade agreement* which controls the individual contracts of employment. J. I. Case Co. v. N.L.R.B., 321 U.S. 332, 64 S.Ct. 576, 88 L.Ed. 762." (Emphasis added.)

The fact that each worker's claim is based upon an individual contract of employment was again recently recognized in *International Union v. Hoosier Cardinal Corp., supra,* 383 U.S. 696.

The Pacific Coast Longshore Agreement not being a contract of employment and merely being a "trade agreement" could not have an effect upon anyone not employed thereunder and could not therefore include Union officials under Section 17.81 thereof. Local 13's officials are not employed under the Pacific Coast Longshore Agreement, the severance is full and complete and must be as a matter of law, for they do not perform any function for or on behalf of the employer and therefore do not and cannot receive remuneration from the employer as the receipt of same would be a violation of Section 8(a) (2) of the Labor Management Relations Act which prohibits an employer from "contributing financial or other support to" a labor organization.

Local 13 was correct in refusing to arbitrate cases numbered 5 through 12 for an issue regarding one not employed under the Pacific Coast Longshore Agreement, such as a union official, is not arbitrable. Arbitrability is for the court to decide, not the arbitrator and one cannot be forced to arbitrate that which he did not agree to arbitrate.

Atkinson v. Sinclair Refining Co., 370 U.S. 238, 241, 82 S. Ct. 1318 (1962);

John Wiley and Sons, Inc., v. Livingston, 376 U.S. 543, 546, 84 S. Ct. 909.

The arbitration opinion and decision of the Area Arbitrator was void for the inclusion therein and the arbitration of cases five (5) through twelve (12) as is the opinion and decision of the Coast Arbitrator as having been made and based upon the Area Arbitrator's opinion and decision as to cases five (5) through twelve (12). The lower Court erred in not considering the issue of either the power or jurisdiction of the Area or Coast Arbitrator or making specific findings or conclusions thereon and in not finding and concluding that the opinions and decisions of the Area and Coast Arbitrators were beyond their power and jurisdiction and should be set aside. The closest finding of the Court in this respect was: "That the award manifestly disregards the collective bargaining agreement and the law." [Finding 18 K, TR. p. 618.]

The acts of the Area Arbitrator in arbitrating cases five (5) through twelve (12) were clearly in excess of his powers as was the act of the Coast Arbitrator in deregistering the former union official, Pete Velasquez, based upon cases five (5) through twelve (12). The *Arbitration Act, 9 U.S.C.* Section 10 Subdivision "d", provided the remedy of setting the award aside *"Where the arbitrators exceed their powers."* The lower Court erred in both not considering and in not granting the relief provided by the *Arbitration Act.*

In similar respect, plaintiff, Local 13, could not have gone to arbitration to attempt to discharge the president or any of the officers of the defendant P.M.A., as their employment is not covered by or paid for under the *"trade agreement."* Such an attempted arbitration or discharge would be absurd; likewise, the attempted arbitration and deregistration of Pete Velasquez for alleged acts occurring while he was an official of and solely employed by plaintiff, Local 13, is equally absurd and void; such a proposal lacks all mutuality.

D. An Arbitration Award Which Is Violative of the Labor Management Relations Act or Thwarts Its Intent or Purpose Is Void, and the Lower Court Erred in Not Setting the Opinions and Decisions of the Arbitrators Aside as a Manifest Disregard of the Law, the Award Being in Violation of Sections 7, 8, and 301 of the Act.

The lower Court found: "That the award manifestly disregards the Collective Bargaining Agreement and the law." [TR. p. 618, Finding 18 K.] However, the lower Court continued by concluding:

> "The Claim that the award is in manifest disregard of the Collective Bargaining Agreement and the law does not raise any breach of the ILWU's duty of fair representation." [TR. p. 636, Conclusion IV K.]

The lower Court erred in its Conclusion No. IV and IV K and in doing so continued to proceed upon an improper premise. The improper premise being that the only way which plaintiff could prevail was by raising a breach of the ILWU's duty of fair representation.

Any arbitration decision which by its terms or effect is violative of a federal law and tends to thwart the purpose of the law is invalid and may be set aside under the *Federal Arbitration Act, 9 U.S.C., Sec. 10.* In *Wilco v. Swan,* (2nd Cir. 1952) 201 F. 2d 439, 444, 445, the court set forth that failure to decide in accordance with the Securities Act constituted grounds for vacating the award under Section 10 of the *Arbitration Act.* In *Evans, v. Hudson Coal Co.,* (3rd Cir. 1947) 165 F. 2d 970 which was between the mineworkers and operators the court held that if the arbitration proceeded to an award which is not in accordance with the provision of the "Fair Labor Stand-

ards Act *or any other applicable statute*" (Emphasis added.) that Section 10 of the *Arbitration Act* provided means for vacating the award.

In similar respect in *Watkins v. Hudson Coal Co.,* (3rd Cir. 1945) 151 F. 2d 11 where it was urged that the contract entered into between the Company and Union bargaining agent was illegal and void as against public policy and contrary to the Fair Labor Standards Act, the court found the provisions of the agreement which were contrary to be invalid. In the same regard the court in *Red Star Exp. Lines v. N.L.R.B.,* (2nd Cir. 1952) 196 F. 2d 78 found the Union Security provisions of the Collective Bargaining Agreement illegal as violative of the *Labor Management Relations Act, 29 U.S.C.A.,* Sec. 158 (a) (3), and enforced the Board's order in respect thereto. In similar respect in the case of *N.L.R.B. v. American Rolling Mill Co.,* (6th Cir. 1942) 126 F. 2d 38, 41, the court found the Collective Bargaining Agreement violative of *29 U.S.C.A.,* Sec. 158 as having coercive effect in respect to membership and terminated the provisions thereof. See also *N.L.R.B. v. News Syndicate Company,* (1961) 365 U.S. 695, 700, 81 S. Ct. 849, 852.

It was decided in *Wilco v. Swan,* 346 U.S. 427, 436, 74 S. Ct. 182 (1953), that a manifest disregard for the law was subject to judicial review and a ground for setting an award aside. In the latter case of *Saxie Steamship Co. v. Multifacs International Traders Inc.,* (2nd Cir. 1967) 375 F. 2d 577, 582, the rule was again enunciated with somewhat different emphasis, the Court at page 582 stated:

> "In addition to the specific proscriptions of 9 USC, Sec. 10, the Supreme Court has held in Wilco v. Swan, supra, 346 U.S. 436, 440, 74 S.Ct. 182, that an award based on 'manifest disregard' of the law will not be enforced; but this

presupposes 'something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law.' San Martine Compania de Navegacion v. Saguenay Terminals Ltd., supra, 293 F.2d at 801. See also Amicizia Societa Navegazione v. Chilian Nitrate and Iodine Sales Corp. supra, 274 F.2d 808."

The provisions of the Labor Management Relations Act as amended must be read as part of every collective bargaining agreement and the collective bargaining agreement should be read to include the terms of the act therein.

N.L.R.B. v. News Syndicate Company, (1961) 365 U.S. 695, 700;

Pacific Tel. & Tel. Co. v. Communication Workers of America, (D. Ore. 1961) 199 F. Supp. 689, 692;

Manseau v. United States, (Ed. Mich. S.D. 1943) 52 F. Supp. 395, 396;

Flores v. Barman, 130 Cal. App. 2d 282, 279 P. 2d 81.

An arbitration award must interpret the Collective Bargaining Agreement in conformity with the Labor Management Relations Act and the award must be in conformity with the Act. An arbitration award which ignores the provisions of the Act or which thwarts or subverts the Act or its intent evidences a manifest disregard for the law and must be set aside.

The opinions and decisions of the arbitrators which by their terms included union officials in the application, interpretation and effect of Section 17.81 of the Collective Bargaining Agreement are void. Section 17.81 of the Collective Bargaining Agreement provides in part:

"17.81 All longshoremen shall perform their work conscientiously and with sobriety and with due regard to their own interests shall not disregard the interests of the employer. *Any employee* who is guilty of deliberate bad conduct in connection with his work *as a longshoreman* or through illegal stoppage of work shall cause the delay of any vessel shall be fined, suspended, or for deliberate repeated offense, cancelled from registration. * * *" (Emphasis added.)

Section 1.71 of the Agreement provides:

"1.71 The term 'longshoreman' as used herein shall mean any man *working under this Agreement.*" (Emphasis added.)

Section 17.52 of the Agreement provides in part:

"17.52 Powers of arbitrators shall be limited strictly to the application and interpretation of the agreement as written. * * *"

The arbitrators failed to read into or consider the *Labor Management Relations Act* and its prohibitions and restrictions in interpreting the Collective Bargaining Agreement and wrongfully included union officials in the effect of Section 17.81 rendering their decisions void as being contrary to and in conflict with the provisions of Sections 7 and 8(a) (1) and (2) and Section 301 of the Act (29 U.S.C. Sections 157, 158, and 185). The arbitrators further applied the provisions of Section 17.81 to union officials contrary to the express terms of the Collective Bargaining Agreement and the restricted powers of the arbitrators as set forth in the Agreement which precluded such an interpretation. Clearly the arbitrators evidenced, as the Court found, a manifest disregard for the law and the Collective Bargaining Agreement. The facts of such disregard being

hereinafter more fully set forth in subsequent points D-1, D-2, D-3, D-4 and D-5 hereof.

In similar respect the lower Court erred in its Conclusion numbered II [TR. p. 619] when it concluded that the arbitrator's decisions and awards "were and are in complete accordance with the terms of the Collective Bargaining Agreement." This conclusion is in direct conflict with Finding 18 K, which provides "That the award manifestly disregards the Collective Bargaining Agreement and the law." The conclusion is also contrary to the law and facts as hereinbefore and hereinafter set forth for a manifest disregard for the law and the Collective Bargaining Agreement requires the conclusion the arbitrators' awards are in excess of their powers and should be set aside.

D-1. The District Court Has the Duty to Set Aside an Arbitration Award Which Is Violative of the Law as Constituting or Furthering an Unfair Labor Practice.

The legislature gave the right to the United States District Courts to compel and set aside arbitration awards; the right is not altered by the fact that the claimed grievance is also an unfair labor practice.

In *Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U.S. 448, 77 S. Ct. 912 in holding that the United States District Court had the right to compel arbitration and in speaking of the National Labor Relations Act, the Court at page 452 stated:

> "The bills as they passed the House and Senate, contained provisions which would have made the failure to arbitrate an unfair labor practice. * * * This feature of the law was dropped in conference. As the Conference Report stated, 'Once parties

> have made a collective contract, the enforcement of that contract should be left to the usual processes of law *and not to the National Labor Relations Board.*'" (Emphasis added.)

In the latter but similar case of *Carey v. Westinghouse Electric Corporation,* 375 U.S. 261, 84 S. Ct. 401 in upholding the right to compel the arbitration though the dispute could also involve an unfair labor practice at page 268, the Court stated:

> "* * * But the existence of a remedy before the Board for an unfair labor practice does not bar individual employees from seeking damages for breach of a collective bargaining agreement in a state court, as we held in Smith v. Evening News Assn., 371 U.S. 198, 83 S.Ct. 267, 9 L.Ed. 2d 246. We think the same policy considerations are applicable here. * * *"

In *Textile Workers Union of America v. Cone Mills Corp.,* 188 F. Supp. 626, affirmed (4th Cir. 1961), 290 F. 2d 921, the matter of affirming or vacation an arbitration award was summed up and the Court stated:

> "The question for determination is whether the award should be affirmed and enforced, or should be vacated and set aside as invalid. In making this determination, we are directed to apply *federal substantive law 'fashioned from the policy of our national labor law.'* * * *" (Emphasis added.)

It is clear from the cases and legislative history of Section 301 of the *Labor Management Relations Act* that District Courts have the power and duty to set aside an arbitration award when the decision is contrary to the National Labor Policy which stems from the *Labor Management Relations Act* and includes decisions and awards which are violative of Section 8(a)

(1) and (2) of the Act or any other provision thereof regardless of whether or not the violation is also an unfair labor practice, as was stated in *Sidney Wanzer and Sons, Inc. v. Milk Drivers Union Local 753,* (1966) 249 F. Supp. 664, 671. "Remedies under Section 301 must be tailored to the problems which they are invoked to solve" and as was stated in *Textile Workers Union v. Lincoln Mills of Alabama,* 353 U.S. 448, 456, "the Act would be undercut and the policy defeated if the Act were given a narrow reading."

The remedy to be tailored in the present case was for the lower Court to set the arbitrators' decisions and opinions aside and the lower Court erred in not doing so and in affirming the decisions and opinions. The lower Court erred in not finding and concluding that the arbitrators' decisions were contrary to the *Labor Management Relations Act,* but correctly found in finding number 14 K [TR. p. 618] that the awards were a manifest disregard for the law and the Collective Bargaining Agreement.

D-2. The Opinions and Decisions of the Arbitrators Were Void and a Manifest Disregard for the Law, Constituting a Discharge for Union Activities in Violation of Sections 7 and 8 (a) (1) of the Labor Management Relations Act, 29 U.S.C., Sections 157 and 158 and Should Have Been Set Aside by the Lower Court.

The opinion and decision of the Area Arbitrator is attached hereto as Appendix I and the decision and opinion of the Coast Arbitrator is attached hereto as Appendix II. Cases numbered five (5) through twelve (12) of the Area Arbitrator's decision, and each of them, clearly and unmistakenly show that each of the matters therein complained of occurred while Pete Velasquez was performing his duties as Night Business

Agent and an officer of plaintiff Local 13. The duties and official capacity of a Night Business Agent are set forth in Section 4 of the "Constitution-By-Laws-General Rules" of Local 3 which is attached to plaintiff's complaint as Exhibit "C". [TR. p. 86.]

Of the charges in cases numbered 1 to 4, Pete Velasquez was found not guilty as to Case No. 1, Case No. 2 consisted of two complaints, one being in February, 1959, prior to the present collective bargaining agreement, and the other being a complaint against Pete Velasquez *while he was employed as a Union Business Agent during September, 1960,* and also prior to the present collective bargaining agreement. The matters of Case No. 2 were only offered to show that Pete Velasquez was a continuous and repeated offender, and *the arbitrator found that they did not support the employer's contention.* (Appendix I, pp. 1-8.)

Case No. 3 involved Pete Velasquez as a working longshoreman, and he was found guilty. Case No. 4 involved Pete Velasquez as a working longshoreman and he was also found guilty in that case. However, neither Case No. 3 nor Case No. 4 found Pete Velasquez guilty of violation of Section 17.81 of the Pacific Coast Longshore Agreement or that any work stoppage delayed a vessel, each of these elements together with the finding that Velasquez deliberately and repeatedly delayed vessels being necessary to deregister Pete Velasquez. [Sec. 17.81 Pacific Coast Longshore Agreement, TR. p. 53.]

The decision of the Coast Arbitrator, Appendix II, summarized the 12 cases on pages 4, 5, 6, and on page 8 the Coast Arbitrator stated:

> "The area arbitrator's awards found Velasquez guilty in case after case of having violated Section 17 of the agreement."

The Coast Arbitrator thereafter deregistered Pete Velasquez based upon the matters which were before the Area Arbitrator and in doing so deregistered Velasquez for his activities as a union official, stating:

> "For purposes of assessing a penalty this provision includes union officers. They are employees only on leave when elected to union office." (Appendix II p. 7.)

The deregistration of Pete Velasquez was not only one and the same as having discharged him from his employment, it discharged him permanently from all employment of the many employers under the Pacific Coast Longshore Agreement which comprises substantially all employment within the industry. [Tr. p. 400, Velasquez aff., pars. 17 and 18.] Said discharge being for union activities.

There can be no question as to Velasquez' status and that the arbitrators were aware of his status and made a distinction as to when he was employed as a longshoreman and when he was employed as a union official both in their awards and during the hearing. The transcript [Ex. 6-c page 202] provides:

> "Mr. Bulcke: In the previous session where the union participated, we dealt with alleged violations that involved Pete Velasquez as an employed longshoreman these complaints deal with alleged violations in the capacity of business agent." ("These complaints" referring to cases 5 through 12).

The transcripts of the proceedings before the Area Arbitrator were before the Coast Arbitrator as was the Arbitrator's award. [Ex. 7, Coast Arbitrator, TR. pp. 4-7.]

Section 7 of the *Labor Management Relations Act,* as amended, *29 U.S.C.* Section 157, provides:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3)."

Section 8(a) (1) and (2) of the *Labor Management Relations Act,* as amended, *29 U.S.C.* Sec. 158(a) (1) and (2) provides in part as follows:

> "Sec. 8(a) It shall be unfair labor practice for an employer—
>
> "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> "(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *"

A discharge for union activities whether or not said discharge is in whole or only in part for union activities is unlawful and a violation of Sections 7 and 8 (a) (1) and (2) of the *Labor Management Relations Act* as coercion and interference with the employees' rights.

In *N.L.R.B. v. Barberton Plastic Products, Inc.,* (6th Cir. 1965) 354 F. 2d 66, 68 the court stated:

> "(3) In determining this question, we apply the well-settled rule that if Hetrick's discharge was

motivated *wholly or even in part* by his union activity, it was illegal despite the existence of adequate cause for firing him. Wonder State Mfg. Co. v. N.L.R.B., 331 F.2d 737 (C.A. 6), N.L.R.B. v. Elias Brothers Big Boy, Inc, 325 F.2d 360, 366 (C.A. 6)" (Emphasis added.)

In similar respect:

N.L.R.B. v. Park Edge Sheridan Meats, Inc., (2nd Cir. 1965) 341 F. 2d 725, 728;

N.L.R.B. v. Longhorn Transfer Service, Inc., (5th Cir. 1965) 346 F. 2d 1003, 1006.

The present case is more grievous than the above cited cases as the defendants herein make no pretense that the discharge was not for union activities and compound and worsen the situation as they not only want to deregister Pete Velasquez for union activities they wish to deregister Pete Velasquez for activities which allegedly occurred while Pete Velasquez was solely employed as a union official, carrying out the orders of the membership and his superiors. The discharge is of such great magnitude that it not only prevents Velasquez from working for the companies which filed the complaints it also prevents Velasquez from working for other companies and practically all of the employers in the industry. [TR. p. 400, Velasquez pars. 17-18.]

The policy of the act is so broad that an employer may not discharge or threaten to discharge *an employee, who as a union official* represents employees of another company, for his activities as a union official in representing such other employees, even though his own employer is directly damaged thereby; for such a threatened discharge would be a violation of Sections 7 and 8 of the Act. In considering the question and Sections 7 and 8, *29 U.S.C.A., Sections 157 and 158,* the Court in *Fort Wayne Corrugated Paper Co. v. N.L.R.B.,* (7th Cir. 1950) 111 F. 2d 869, 874 stated.

> "* * * *Employee Markins was a district official of the union and as such represented employees of another company* in their collective bargaining efforts with their employer, who, unfortunately for Corrugated, was its customer and withdrew its business from Corrugated because of Markins' activities. While Corrugated's reaction in chastising and even threatening its employees whose acts caused it real economic loss is readily understandable, it is not reconcilable with the above section." (Emphasis added.)

If the company could not discharge their employee who was also a union official for his union activities, the defendants certainly cannot coerce, chastise, and deprive an official of Local 13 of his livelihood for activities allegedly carried on while the official was not even an employee of defendants, a fact which is controverted and shown on the face of the arbitration opinions and decisions.

A summary of a portion of the uncontroverted evidence found in the exhibits which clearly shows that Velasquez was discharged for union activities, together with citations to the exhibits, is hereinafter set forth as Appendix III.

The arbitrations awards and decisions were not only void on their face as being contrary to the law, the uncontroverted evidence also establishes them as being void as a discharge of an employee for Union activities. *N.L.R.B. v. Barberton Plastics Products, Inc., supra.*

By Mr. McEvoy's statement to Mr. Carney, the P.M.A. intended to deregister Pete Velasquez for his activities as a Union Business Agent because "he knows the contract too well" and by Mr. McEvoy's statement to Mr. Johnston, that the plan to deregister Pete had been considered for a long period of time, the defend-

ant's approach is clear. They designed their plan to deregister Velasquez while he was a union official and for activities carried on as a union official and then waited until he had been out of office and then put their plan into effect. [TR. p. 397, par. 9.]

Local 13's President Curt Johnston was correct in refusing to arbitrate cases numbered 5 through 12 for the arbitration of such cases was an attempt to discharge an employee for union activities and an attempt to violate the *Labor Management Relations Act.*

The lower Court erred in not finding and concluding that the deregistration of Pete Velasquez was for union activities and therefore setting the decisions and opinions of the arbitrators aside as being violative of Sections 7 and 8(a) (1) of the Labor Management Relations Act. The Lower Court further erred in not finding and concluding that the opinions and decisions of the arbitrators were beyond and in excess of the arbitrators' powers and therefore setting the opinions and decisions aside.

D-3. The Decisions and Opinions of the Arbitrators Were Error as a Manifest Disregard for the Law and Should Be Set Aside by Reason of Their Effect in Providing a Means for the Employer to Dominate and Coerce Plaintiff Local 13 and Interfere With the Administration of Plaintiff Union and Deprive the Membership of Representation of Its Choosing in Violation of Sections 7 and 8(a) (1) and (2) of the Labor Management Relations Act, 29 U.S.C., Sections 157 and 158.

The evidence previously set forth in Point D-2 establishes a premeditated plan to deregister and discharge Pete Velasquez for union activities. The affidavits, answers to the interrogatories and the record of the arbitration further show that the arbitration awards

and decisions were designed to, and have the effect of, interfering with the administration of plaintiff Local 13, coercing and dominating said Local and depriving the membership of officials and representatives of their own choosing, and will continue to have such effect as long as the award and decision deregistering Pete Velasquez stands. The arbitrators were made aware of the above contentions and the effect of their intended acts prior to the ex parte arbitration of Cases 5 through 12. [Ex. 6-B, p. 178.]

A summary of a portion of the uncontroverted evidence found in the exhibits which clearly show domination, coercion and interference of defendant P.M.A. by reason of the arbitrators' decisions and opinions, together with the citations to the exhibits is hereinafter set forth as Appendix IV.

The exhibits further shown how defendant P.M.A. has, and continues to use the opinions and decisions of the arbitrators to interfere with, threaten and harass plaintiff and its members by threatening to discharge officials of plaintiff, Local 13, for carrying out their duties in administering the Collective Bargaining Agreement and by bringing similar charges against said officials.

Section 8(a) (1) and (2) of the *Labor Management Relations Act*, as amended provides:

> "Sec. 8. (a) It shall be an unfair labor practice for an employer—
>
> "(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;
>
> "(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *"

In order that a labor organization shall maintain itself as truly representative of an employee's interests section 8 of the *Labor Management Relations Act* prohibiting domination and interference must be broadly interpreted so as not to destroy its purpose or legislative intent. *N.L.R.B. v. Groswold Mfg. Co.,* (3rd Cir. 1939) 106 F. 2d 713, 722. The interpretation of Section 8 is not only broad but the manner of its proof is also broad. In the case of *N.L.R.B. v. Mr. Chemens Potter Co.,* (6th Cir. 1945) 147 F. 2d 262, 266, the court stated:

> "* * * As we observed in National Labor Relations Board v. Clinton Woolen Mfg. Co., 141 F.2d 753, 758, 'Interference, coercion, and domination are active processes. They may, of course be inferred from a course of conduct even though no overt acts are proved * * *"

Regardless of the manner in which the employer coerces the Union or interferes with its administration the coercion or interference is a violation of the Section 8. In the case of *N.L.R.B. v. Virginia Electric & P. Co.,* (1945) 314 U.S. 469, 62 S. Ct. 344, 348, the Court stated:

> "And in determining whether a course of conduct amounts to a restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways."

The policy of the Labor Management Relations Act to prevent coercion by the employer and interference with the Union is as broad as may be necessary to provide the required protection and is broad enough to prevent the employer from doing indirectly that which the employer cannot do directly. In *Local 636, etc. Plumbing and Pipe Fit. Ind. of U.S. v. N.L.R.B.,* 287 F. 2d 354 (1961) which involved the plumbing industry and

numerous employers, the superintendents of some of the employers were members of the Union some served upon the executive board and some participated in negotiations, it was agreed that these activities were carried on in complete good faith and the supervisor's actions were not authorized or ratified by the employer. The Circuit Court upheld the board's findings that the above activity amounted to participation of these employers in the internal affairs of the Union and "constituted employer violations of Sections 8(a) (1) and (2) of the Labor Management Relations Act." In doing so the Court at page 361 stated:

> "As the Supreme Court said in International Association of Machinists, supra, 311 U.S., at page 80, 61 S.Ct. at page 88:
>
> "(I) Interference must be determined by careful scrutiny of all the factors, *often subtle,* which restrain the employees' choice * * *"
>
> "(5, 6) We think that active participation in union affairs by supervisors was aptly characterized as 'interference' by the Board. We also agree with the Board in charging the interference thus found to the respondent employers. 'The policy of the Act is to insulate employees' jobs from their organizational rights.' Radio Officer's Union, supra, 347 U.S. at page 40, 74 S.Ct. at page 335. *'We are dealing here * * * with a clear legislative policy to free the collective bargaining process from all taint of an employer's * * * influence.'* Machinists, supra, 311 U.S. at page 80, 61 S. Ct. at page 88." (Emphasis added.)

In *N.L.R.B. v. Employing Bricklayer's Ass'n of Del Val. & Vic.,* 202 F. 2d 627 (3rd Cir. 1961) where officers and supervisory employees of respondent employers, who were dues-paying union members, partici-

pated in the affairs of the union and voted for its officers and there was no contention that the employer dominated or assisted the union or that the persons participated other than as individual members, the Court at page 629, stated:

> "(2) It is clear that the Board properly concluded in the instant case that respondents interfered with the internal administration of the affairs of the Union by participating in the selection of union officers and bargaining representatives and that its order should be enforced."

The case of *Fort Wayne Corrugated Paper Co. v. N.L.R.B., supra,* 111 F. 2d 869, 873, 874 made the premise clear that the discharge of a union official, for union activities which damaged the employer, was a violation of sections 7 and 8 of the Act (29 U.S.C. Secs. 157 and 158) even if the union official was an employee. In the present case Velasquez was not even an employee of defendant P.M.A. or employed under the collective bargaining agreement. Velasquez was solely employed by the plaintiff Local 13, during the alleged events of cases numbered 5 through 12 which were basis for his deregistration.

The right to have the union operate in a climate free of coercion is the cornerstone of the *Labor Management Relations Act. Local 57, International Ladies Garment Workers Union v. N.L.R.B.,* (1967) 374 F. 2d 295, 301. In substance the arbitration opinions and decisions and the confirmation of the opinions and decisions by the lower Court are destructive of the *Labor Management Relations Act* and strike at its very cornerstone. To uphold the deregistration of Pete Velasquez for union activities is coercion of the membership of Local 13 and interference with the administration of the Local in its strongest and purest

form. The violation of the *Labor Management Relations Act,* and its policy, is as flagrant as could be conceived under any set of facts and the violation together with the interference and coercion extending therefrom has continued and will continue until the decisions and opinions of the aribitrators are vacated and set aside.

Domination exists even though it may be the result of a prior act which has terminated; one of the tests being whether the collective bargaining, is *"free from all taints of employer domination * * * or influence." Sperry Gyroscope Co. v. N.L.R.B.,* (2nd Cir. 1942) 158 F. 2d 448, 456. In the present case the act of defendants is a continuing act of domination and interference and must by reason of the terms of the arbitration award and decision continue until such time as the award is set aside. Administering the collective bargaining agreement is one of the more important and a continuing function of a union, (*International Union v. Hoosier Cardinal Corp., supra,* 383 U.S. 696, 86 S. Ct. 1107) for without administration, the collective bargaining agreement has no effect. Deregistration or threat of deregistration for acts arising out of the administration of a collective bargaining agreement is the most patent type of domination and interference by an employer and is much more than a taint of domination or influence, it is domination and influence carried to its ultimate.

Influence by management even though it may be "ever so slight" is a violation of the Act, the requirement being that "labor will be represented by persons or organizations having only its interest in mind, and acting wholly uninfluenced by fear or favor, of or from the management." *N.L.R.B. v. Brown Paper Mill Co.,* (5th Cir. 1940) 108 F. 2d 867, 871. The employer must keep his hands off and "exert no influence over his employees *either directly or indirectly* * * *."

N.L.R.B. v. Cleveland-Cliffs Iron Co., (6th Cir. 1943) 133 F. 2d 295, 301. The mere threat of *economic reprisal* is a violation of Section 8(a)(1) of the Act. *N.L.R.B. v. Yale Manufacturing Company,* (1st Cir. 1966) 356 F. 2d 69, 72 and the description *of past union conduct* is itself a threat of future action. *N.L.R.B. v. J. W. Mays, Inc.,* (2nd Cir. 1965) 356 F. 2d 693 and it is not necessary to show that any employee was intimidated or coerced by the threat. *N.L.R.B. v. Electric Steam and Radiator Corporation,* (6th Cir. 1963) 326 F. 2d 733, 736.

Acts of an employer which amount to coercion, interference or domination are a violation of Section 8(a)-(1) of the Act even though the statements or acts are not directly coercive, they are a violation *if they can reasonably be construed to be coercive by the employee. N.L.R.B. v. Electric Steam and Radiator Corporation, supra,* page 736. The protection of the rights of employees in the above regards are so extensive that they are protected "even though no union activity be involved, or collective bargaining be contemplated." *N.L.R.B. v. Phoenix Mutual Life Ins. Co.,* (7th Cir. 1948) 167 F. 2d 983, 988.

In the present case the threat, coercion, domination and interference is more than slight, it is bold and menacing, it interfers with the administration of the collective bargaining agreement and the right of the employees and members to be represented by officials of their own choosing. An official which is hampered in his duties in the administration of the collective bargaining agreement by threat of economic reprisal is not an official, in the true sense, of a member's own choosing. In similar respect, *an official is an agent, employee, and representative of the membership; a threat against the official is a threat against the membership and an interference with their rights.*

The lower Court erred in not finding and concluding that the opinions and decisions of the arbitrators were violative of Sections 7 and 8(a) (1) and (2) of the Labor Management Relations Act and therefore setting the opinions and decisions aside. The lower Court further erred in not finding and concluding that the opinions and decisions of the arbitrators were beyond and in excess of their powers and therefore setting the opinions and decisions aside.

D-4. The Decisions and Opinions of the Arbitrator Were a Manifest Disregard for the Law and in Violation of Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185, as Constituting an Award of Damages Against a Union Official and Should Have Been Set Aside by the Lower Court.

Section 301 of the *Labor Management Relations Act, 29 U.S.C.,* Section 185, permits suits for violation of a collective bargaining agreement and provides that the judgment rendered shall not be enforceable against any individual member or his assets. In construing the use of the word "between" in subsection (a) thereof, the courts have held that that word refers to violations of contracts between labor organizations and employers and refers to the contracts, not suits. *Republic Steel Corporation v. Maddox,* 379 U.S. 650, 85 S. Ct. 614, 618.

In respect to Section 301 of the Act, union officials also have an immunity as to suits by employers over alleged breaches of the collective bargaining agreement. In *Fifth Avenue Coach Lines, Inc. v. Transport Workers Local 100,* (S.D.N.Y. 1964) 235 F. Supp. 842, suit was brought by the employer against the union and its president for breach of the collective bargaining agreement due to a twenty (20) day strike on the part

of the union. The union moved for a stay of the proceedings pending arbitration in accordance with the collective bargaining agreement and the President moved to dismiss on the ground of failure to state a claim for which relief could be granted. The Court granted both motions and at page 845 stated:

> "(2) Also before the Court is Defendant Quill's motion to dismiss the complaint against him. Quill is alleged in the complaint to have 'counseled, procured, induced and caused the * * * breach of contracts * * * and * * * the aforesaid illegal strike'. Quill was the president of the union, and the Supreme Court has held that an action under Section 301 (a) of the Taft-Hartley Act lies against the Union, and that no action lies against the president of the Union. Atkinson vs. Sinclair Refining Co., 370 U.S. 238, 82 S.Ct. 1318, 8 L.Ed. 2d 462 (1962). Accordingly, defendant Quill's motion to dismiss as against him will be granted."

In the case of *Atkinson v. Sinclair Refining Company,* 370 U.S. 238, 82 S. Ct. 1318 where Count II charged the individual defendants with a violation of the no strike clause, (p. 246) the Company contended that the union officers confederated and conspired to cause the employer expense and damage and induce breaches of labor contract and interfered with the performance thereof, in dismissing Count II due to the naming of union officials therein and holding that an action for damages could not be brought against said officials, the Supreme Court at page 247 stated:

> "Under any theory, therefore, the company's action is governed by the national labor relations law which *Congress commanded this court to fashion* under Section 301 (a). We hold that this law requires the dismissal of Count II for failure to state a claim for which relief can be granted—whether

the contract violation charged is that of the union or that of the Union plus the Union officers and agents."

"The *national labor policy* requires and we hold that when a union is liable for damages for violation of the no-strike clause, *its officers* and members *are not liable* for these damages." (p. 249) (emphasis added.)

In the present case if the work stoppages actually complained of existed, then the union was liable. *N.L.R.B. v. Local 815 International Brotherhood of Teamsters,* (2d Cir. 1961) 290 F. 2d 99, 103. The union being liable then no action could have been taken against Velasquez. *Atkinson v. Sinclair Refining Company, supra, Fifth Avenue Coach Lines v. Transport Workers Local 100, supra.* The *Atkinson* case, *supra,* recognized that a no strike clause established a rule of conduct which may justify the discharge of employees (p. 246) but denied such application or discipline as against a union official.

In *Smith v. Evening News Association,* 371 U.S. 195, the Court stated: "Section 301 is not to be given a narrow reading." In *Atkinson v. Sinclair Refining Company, supra,* at page 249, the Court stated: 'We would undercut the Act and defeat its policy if we read Section 301 narrowly.' "

Further a claim which cannot be maintained at law or is discharged by law is not arbitrable irrespective of the existence of an arbitration agreement. *L. O. Koven Brothers, Inc., v. Local 5757 United Steelworkers,* (N.J. 1966) 250 F. Supp. 810. Arbitration itself is merely a form of trial which takes the place of a trial at common law.

Wilco v. Swan, supra, 201 F. 2d 439;

Murray Oil Products v. Matsui and Co., 146 F. 2d 381, 383.

The decision deregistering Pete Velasquez was no different from an action at law assessing damages against Pete Velasquez for alleged work stoppages which allegedly occurred with Velasquez was solely employed as an official of Local 13. Such action could not have been maintained at law nor can it be done indirectly under the guise of an arbitration so as to thwart and subvert the law and "undercut" Section 301 of the Act, for arbitration has the same effect as an action at law.

The affidavit of Pete Velasquez [TR. p. 393] in paragraphs 14, 15 and 16, page 6 sets forth Velasquez' many years of contributions to the pension welfare plans and his and his family's rights thereunder and his being deprived thereof by his deregistration. Paragraph 16 sets forth his right to $1200.00 from the mechanization fund and his deregistration depriving him of said sum and of future benefits from the mechanization fund. Paragraphs 17 and 18 on page 8, set forth Velasquez' seniority rights, his advancement to the position of winch driver and how he was barred from and deprived of all of his rights by his deregistration and thus prevented from working in the industry and that the effect of the deregistration was so broad that he is precluded from working for employers that did not file or make charges against him. The damage and coercive effect in respect to loss of pension and welfare rights has been recognized by the courts. *N.L.R.B. v. International Brotherhood of Teamsters, supra,* 299 F. 2d 99, 102, 103.

Defendant P.M.A. has attempted, with the aid of arbitrators, to "undercut," thwart and subvert the law and to do indirectly that which defendant could not have done directly. The effect of the award is clearly to assess damages against Velasquez for work stoppages allegedly created while he was a union official. The *Labor Management Relations Act* and public policy

as evidence by the National Labor Policy is clearly broad enough to prohibit the result obtained by defendant. There is little difference and no distinction between defendant's withholding mechanization money which they held in trust for Velasquez or executing on money held by him. The effect on Velasquez is the same as money damages when he is deprived of earning sums to which he is entitled. The acts of defendants are a subterfuge which even lacks being subtle, and are a violation of the act even as the most subtle of subterfuges are.

The lower Court erred in not finding and concluding the opinions and decisions of the arbitrators were violative of Section 301 of the Labor Management Relations Act and therefore setting the opinions and decisions aside. The lower court further erred is not finding and concluding that the arbitrators' decisions and opinions were beyond their powers and therefore setting the decisions and opinions aside.

D-5. The Decisions and Opinions of the Arbitrators Were in Error and a Manifest Disregard for the Law as Being an Unauthorized Modification of Section 17.81 of the Pacific Coast Longshore Agreement in Violation of the Provisions of Sections 8(d) (1) (2) and (3) of the National Labor Relations Act and Should Have Been Set Aside by the Lower Court.

Sections 8 (d) (1) (2) and (3) of the Labor Management Relations Act, *29 U.S.C.A.*, Section 158, subsections (d) (1) and (2) provide that only means by which a collective bargaining agreement can be modified setting forth the time and notices required.

The *affidavit of Curt Johnston* [TR. p. 447, lines 20-32] sets forth the manner in which the Pacific Coast Longshore Agreement is ratified by a member-

ship referendum ballot that no such issue of including officers in Section 17.81 was ever put to any ballot or approved or authorized by the membership. The affidavit sets forth that never before had such an interpretation been applied to Section 17.81.

For their own benefit, defendant P.M.A. have modified Section 17.81 of the Pacific Coast Longshore Agreement and obtained Harry Bridges' acquiescence in same, however, the attempted modification was not done either as prescribed by *29 U.S.C.A.,* Section 158, subdivisions (d) (1) and (2) or approved by referendum ballot and is therefore void and of no effect. The defendants obtained the modifications, to the detriment of Local 13 and Pete Velasquez through the use of arbitrators even though Section 17.52 of the Pacific Coast Longshore Agreement provided that "Powers arbitrators shall be limited strictly to the application and interpretation of the agreement as written." Such modification having been made contrary to the specific terms of Secs. 17.81 and 1.71 of the agreement.

Section 22.1 of the Pacific Coast Longshore-Agreement provides:

> "No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto."

There is no showing of any such written amendment or modification and none could be had as same would be contrary to the *Labor Management Relations Act,* as previously set forth, and consequently void. Section 22.1 was previously dealt with in an appeal from the granting of a motion for summary judgment in *Williams v. Pacific Maritime Association,* (9th Cir. 1967) 384 F. 2d 935, 939, where the Court noted that purported new rules were not adopted in the manner provided by the Collective Bargaining Agreement.

Such a modification was dealt with *Clark v. Hein-Werner Corp.,* (1960) 100 N.W. 2d 317, 7 Wisc. 2d 264 where the rights of the employees had been fixed under a collective bargaining agreement and the Court held that the union did not have the right to barter them away before an arbitrator even though the union could have in the first instance contracted to accomplish the same result. In the present case the facts are stronger for in the present case the union could not have in the first instance contracted to include union officials in Section 17.81 of the agreement for such an inclusion would be contrary to law and public policy.

The lower Court erred in not finding and concluding that the decisions and opinions of the arbitrators were a wrongful modification of the Collective Bargaining Agreement in violation of Sections 8(d) (1) (2) and (3) of the National Labor Relations Act and beyond and in excess of the powers of the arbitrators and in not therefore setting the opinions and decisions aside.

E. The Legal Significance of Including Union Officials in Section 17.81 of the Pacific Coast Longshore Agreement, Together With the Effect of Such an Inclusion as Being Violative of the Labor Management Relations Act, Public Policy or the Terms of the Arbitration Provisions Were Questions for the Lower Court to Decide.

The points hereinbefore set out in respect to the arbitrators' decisions being a manifest disregard for the law or set out hereinafter as to whether the arbitration decisions are void as being contrary to law or public policy are each matters of law which are appropriate for this court to decide and as such and are not matters within the exclusive province of the arbitrators. The arbitration was a limited arbitration with the powers of the arbitrators limited to Section 17.52 and Section

17.62 of the Agreement to interpreting "the contract as written," with Section 17.53 providing the decisions must be based on a showing of facts and their application under the specific provisions of the written Agreement; and with Section 22.1 providing that the provisions of the Agreement could not be amended, modified, changed, altered or waived except by written document executed by the parties. The interpretation of Section 17.81 thereby becoming one of law and a proper one for the lower Court to have made.

In *Old Dutch Farms, Inc. v. Milk Drivers and Dairy Employees Union,* (2nd Cir. 1966) 359 F. 2d 598, 602, 603, the Court in considering whether a matter should be submitted to arbitration stated:

> "The resolution of the present controversy requires (1) a determination of whether the union violated Section 8(b) (4) of the NLRB, and (2) an assessment of the actual business injuries sustained by the employer. Courts hardly can be considered less competent than a labor arbitrator, whose forte is more likely to be in the area of contract disputes and 'employee's grievances claims' * * *." (Emphasis added.)

In *Watkins v. Hudson Coal Co., supra,* 161 F. 2d 311, 320, the court stated:

> "* * * The sufficiency of the wage formula and the prvisions for waiver are entirely separable elements of the contract between the parties. *We do not refer to arbitration the question of legality of the formula. That is a question of law which the court must take responsibility in answering."* (Emphasis added.)

In the above respects the lower court did find "That the award manifestly disregards the collective bargaining agreement and the law." [Finding K, TR. p.

618.] The lower court then concluded "The claim that the award is a manifest disregard for the collective bargaining agreement and the law does not raise any breach of I.L.W.U.'s duty of fair representation." [Conclusion IV, K, TR. p. 636.] The Court's finding was correct, however, the court erred grievously in its above conclusion.

F. The Lower Court Erred in Not Finding and Concluding That the Awards Were Contrary to and in Violation of Public Policy and in Not Therefore Vacating and Setting the Opinions and Decisions Aside.

Plaintiff in its second cause of action pled facts setting forth that the opinions and decisions of the arbitrators were void as against public policy. [TR. pp. 75, 76, 2nd cause of action.] Plaintiff by affidavit and answer to interrogatories set forth the grounds in support of its second cause of action whereby the opinions and decisions were void as being contrary to Public policy and the National Labor policy as provided by Sections 7, 8 and 301 of the *Labor Management Relations Act.* Such facts being the same facts previously recited herein in points D through D-5 as being grounds for setting the decisions and opinions aside as being violative of the Labor Management Relations Act and a manifest disregard for the law.

The Court made no finding, conclusion or decision in respect to public policy or the national labor policy and rendered its decision without considering same therein and thereby further erred.

The public policy as set forth by the National Labor Policy renders the arbitration awards or decisions void and only differs in its effect from violation of the Statutory law in that it is broader and more encompass-

ing. In the case of *Local 45 International Union of Electrical Radio and Machine Workers, AFL-CIO v. Otis Elevator Co.,* 314 F. 2d 25, (2d Cir. 1963) the court in analyzing the effect of public policy on the substantive law pertaining to an arbitrator's decision, stated:

> "It is no less true in suits brought under Sec. 301 to enforce arbitration awards than in other law suits that the 'power of the federal courts to enforce in terms of private agreements is at all times exercised *subject to the restrictions and limitations of the public policy of the United States.* * * *' Hurds vs. Hodge, 334 US 24, 34-35, 68 S. Ct. 847, 852-853, 92 L.Ed. 1187 (1948). *The public policy to be enforced is a part of the substantive principles of Federal labor law* which federal courts, under the mandate of Textile Workers Union of America vs. Lincoln Mills, 353 US 448, 77 S.Ct. 912, 1 L.Ed.2d 962 (1957), are empowered to fashion. Cf. Local 174, Teamsters, etc. vs. Lucal Flour Co., 369 US 95, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962) *Thus, when public policy is sought to be interposed as a bar to enforcement of an arbitration award, court must evaluate its asserted content.*" (Emphasis added.)

The same effect:

> *Metal Products Workers Union Local 1645 v. Torrington Co.,* (2nd Cir. 1966) 358 F. 2d 103, 106;
>
> *Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U.S. 448, 77 S. Ct. 912.

The violation of public policy in the present case is Defendant's previously set forth attempt to "undercut" and circumvent Sections 7 and 8 (a) (1) (2) and (3)

of the *Labor Management Relations Act* by obtaining arbitration opinions and decisions including union officials in the interpretation of Section 17.81 of the Pacific Coast Longshore Agreement; thereby deregistering a former union official for alleged acts which he carried out as a union official and discharging him for union activities. The foregoing having the further effect of coercion upon the part of Defendant P.M.A. against Plaintiff and Plaintiff's members in violation of the Act and interference by Defendants in the administration of Plaintiff's Union in further violation of the Act. The violation of public policy is further present in that the opinions and decisions have the effect of awarding damages against the former union official Pete Velasquez in violation of Section 301 of the Act, and improperly modifying the collective bargaining agreement to the detriment of plaintiff and plaintiff members.

The public policy involved is the National Labor policy. The matter of affirming or vacating an award was summed up in the case of *Textile Workers Union of America v. Cone Mills Corp.,* 188 F. Supp. 728 affirmed (4th Cir. 1961) 290 F. 2d 921, in affirming the arbitration award the court stated:

> "The questions for determination is whether the award should be affirmed and enforced, or should be vacated and set aside as invalid. In making this determination, we are directed to apply federal substantive law *'fashioned from the policy of our national labor law' Textile Worker Union vs. Lincoln Mills,* 1957, 353, US 440, 77 S.Ct. 912, 918, 923, 1 L.Ed. 2d. 972; *Textile Workers Union of America vs. Cone Mills Corp.* (4th Cir. 1959) 262 F.2d 920." (Emphasis added.)

In the case of *Textile Workers Union of America v. Lincoln Mills of Alabama, supra,* 353 U.S. 448, 457, 77 S. Ct. 912, the Court stated:

> "*The Labor Management Relations Act expressly provides some substantive law.* It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction *but will be solved by looking at the policy of the legislation and fashioning a remedy to effectuate the policy.*" (Emphasis added.)

Likewise the provisions of the Labor Management Relations Act must be read as part of every collective bargaining agreement and the agreement interpreted in light thereof.

N.L.R.B. v. News Syndicate Company, supra;
Pacific Tel. & Tel. Co. v. Communication Workers of America, supra;
Manseau v. United States, supra;
Flores v. Barman, supra.

It is clear that the Labor Management Relations Act is to be looked to to determine the public policy as is represented by the national labor policy and where express statutory sanction is not present the courts may look to the policy behind the legislation to effectuate remedies to prevent the circumvention of the Act by the employer attempting to "undercut", thwart and subvert the law by doing indirectly that which it cannot do directly.

In the present case the manner and manners in which the opinions and decisions of the arbitrators directly or indirectly violate the *Labor Management Relations Act* and "undercut", thwart and subvert the intent of the act have been set forth in Points D through D-5 hereof. Each of the violations set forth in Points D

through D-5 hereof being also a violation of public policy as represented by our National Labor Policy and each being an additional ground requiring the Judgment of the lower court be reversed and the arbitration awards vacated and set aside.

Had the parties by the express terms of the collective bargaining agreement included union officers in the provisions of Section 17.81 due to the coercive effect previously set forth in Points D-1 through D-4 hereof the provisions would have been violative of the Labor Management Relations Act and therefore unenforceable and subject to being terminated. *N.L.R.B. v. American Rolling Mill Co., supra,* 126 F. 2d 38, 41; *Red Star Exp. Lines v. N.L.R.B., supra,* 196 F. 2d 78. Likewise to allow an arbitrator to apply Section 17.81 to union officials contrary to the terms of the agreement would be contrary to both public policy, the National Labor Policy and the *Labor Management Relations Act* and the arbitrators' decisions making such an application would be and are void.

The lower court erred in not concluding and finding that the arbitrators' awards and decisions were contrary to the public policy and the National Labor Policy and in excess of the arbitrators' powers and further erred in not setting the opinions and decisions aside on such grounds.

G. The Provisions of an Arbitration Award That the Award Shall Be "Final and Binding" Does Not Prevent Review of the Award and the Setting of the Award Aside on the Grounds Set Forth in 9 U.S.C. Section 10 or on the Grounds That the Award Was Contrary to the Law or Violative of Public Policy and the Lower Court Erred in Finding and Concluding to the Contrary.

The lower Court in its Conclusion Number IV K, [TR. p. 637] refers to the provisions of Section 17.27

of the Pacific Coast Longshore Agreement which provides: "the decision of the Coast Arbitrator shall be final and binding" and concludes:

> "Clearly, the parties to the PCLA intended the grievance procedure with final and binding arbitration would be the exclusive method for resolving disputes arising under that agreement."

The lower Court continued to conclude [TR. p. 638] as follows:

> "Accordingly, and since the power of this Court to review the Arbitrator's award here at issue is limited by the rules enunciated in the cases cited above, we must conclude that Plaintiff has not stated, alleged or claimed any facts whatsoever that would establish a cause of action for collateral attack upon the grievance procedure followed in this case and particularly upon the awards of the Coast Arbitrator and Area Arbitrator."

The lower Court erred in its above conclusions and findings which in substance finds and concludes that the Court had no jurisdiction to set the awards aside under the provision of the *Arbitration Act, 9 U.S.C. Section 10* or on the grounds that award was violative of the law, public policy or a manifest disregard for the law. Even without stating so in the Agreement an Arbitration Award, by its normal effect is final and binding. *Charles H. Tompkins Company v. Lloyd E. Mitchel,* (C.A.D.C. 1958) 259 F. 2d 177.

Though an arbitration award is final and binding, it is subject to being set aside under the provisions of the *Arbitration Act 9 U.S.C.A.,* Section 10 or as being contrary to law or public policy. Consequently adding the provisions in an arbitration agreement that the decision shall be "final and binding" adds nothing for it merely states the effect of an arbitration award until set aside.

In considering an arbitration agreement which went far beyond the arbitration agreement in the present case

in that the agreement there involved provided that *neither party should contest or appeal from the award,* the Court in *Arlington Towers Land Corp. v. John Shain, Inc.,* (1957) 150 F. Supp. 904, 923, stated:

> "Although the arbitration agreement specifically provides that the award of the arbitrator *shall be final and binding, that neither party shall contest such findings and that neither party will appeal from any portion of the final judgment,* there appears to be no doubt but that the Plaintiffs are within their rights in challenging the arbitration award, particularly on the grounds of fraud, bias and prejudice." (Emphasis added.)

In *United Steelworkers of America v. Enterprise Wheel and Car Corp.,* (1960), *supra,* 363 U.S. 593, 597, 80 S. Ct. 1358, where the agreement to arbitrate set forth that the arbitrator's decision "*shall be final and binding on the parties*" the Court stated:

> "Yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement."

In similar respect:

Goodall-Sanford, Inc. v. United Textile Workers, (1st Cir. 1956) 233 F. 2d 104, 107, affirmed 353 U.S. 550, 77 S. Ct. 920;

Local 453 International Union of E.R. and M. Workers v. Otis Elevator Co., (2nd Cir. 1963) 314 F. 2d 25, 28, Cer. den. 373 U.S. 949, 83 S. Ct. 1680;

Dallas Typographical Union Number 173 v. A. H. Belo Corporation, 372 F. 2d 577.

The adding of "final and binding" in an agreement adds nothing more than the natural legal effect of an award until set aside. However, in the present case the collective bargaining agreement itself in Section 17.15 thereof provides that after exhaustion of the remedies

that one can go outside of the agreement for relief. The section in part provides [TR. p. 53]:

> "No other remedies shall be utilized by any person with respect to any dispute involving this Agreement until the grievance procedure has been exhausted."

Plaintiff had exhausted the grievance procedure and was before the lower Court entitled to relief by reason of the matters set forth in Plaintiff's Complaint and the Affidavits and evidence in support thereof. Plaintiff had pleaded and proved grounds for relief under 9 *U.S.C.* Section 10, and on the grounds that the award was violative of public policy and a manifest disregard for the law as being violative of the Labor Management Relations Act.

The lower Court erred in finding and concluding that the opinions and decisions of the arbitrators were not subject to review and further erred in not reviewing the opinions and decisions of the arbitration and finding and concluding and adjudging that said opinions and decision be set aside on each of the grounds set forth in this Brief.

H. Appellant Pleaded and Proved Additional Grounds of Fraud, Undue Means, Evident Partiality, Corruption on the Part of the Arbitrators and the Exceeding of Their Powers by the Arbitrators; Each Being Grounds for Setting the Arbitrators' Decisions Aside Under the Arbitration Act, 9 U.S.C. Section 10, and the Lower Court Erred in Not Considering and Finding and Concluding on Such Grounds and in Not Setting the Arbitrators' Decisions Aside and in Confirming and Enforcing Same.

The pleading of fraud, undue means, evident partiality, corruption and excess of the arbitrators' powers is found in the first cause of action of Plaintiff's

Amended Complaint, more particularly Paragraph XXI, pages 8 and 9 thereof. [TR. pp. 72-73.] The proof thereof being contained in Exhibits 1, 2, 3, 4, 5, 6A, 6B, 6C and 7, together with the Answers to Interrogatories which were submitted in opposition to Defendant's Motion for Summary Judgment.

The lower Court in its Findings, Conclusions and Judgment ignored and omitted any consideration of the grounds set forth in the *Arbitration Act, 9 U.S.C.* for setting an arbitration award and decision aside. In substance the Findings, Conclusions and Judgment of the lower court were tantamount to holding that the provisions of the *Arbitration Act* and the relief available thereunder were not applicable and a denial of any relief under the *Arbitration Act.* In each of the foregoing respects the lower court erred, such error being hereinafter more particularly set forth.

H-1. The Arbitration Decisions Should Be Set Aside for Evident Partiality and Corruption.

The claim of evident partiality was made and the Court was under a duty to review the record to determine if evident partiality had been shown on the part of the Arbitrator. *Saxis Steamship Co. v. Multifacs International Traders Inc., supra,* 375 F. 2d 577, 582. In the present case both evident partiality and corruption on the part of the area arbitrator was shown.

The Arbitration Act 9 U.S.C.A., Section 10, Subdivision (b), for setting aside an arbitration award provides:

> "(b) Where there was evident *partiality* or *corruption* in the arbitrators, or either of them." (Emphasis added.)

Plaintiff pleaded the ground of evident partiality for setting the arbitrators' decisions aside. [TR. pp. 71-72.] The grounds for setting aside an arbitration

award as are set forth in the *Arbitration Act 9 U.S.C.* Sec. 10, are applicable to setting aside an arbitration award arising from a collective bargaining agreement. *General Electric Company v. Local 205 United Electrical, Radio and Machine Workers of America,* 353 U.S. 547, 548.

The affidavit of Curt Johnston, President of Local 13, [Ex. 2, par. 27, TR. pp. 439-440], sets forth the conversation resulting from a call placed by the area arbitrator, Germaine Bulcke, subsequent to the Union's refusal to arbitrate cases 8 through 12 on the ground that Section 17.81 does not include Union officials and such arbitration was against Federal and State laws, said conversation being prior to the Area Arbitrator arbitrating cases 5 through 12 *ex parte.* The conversation proceeded with the Area Arbitrator attempting to induce Johnston to continue the arbitration and stating [TR. p. 440]:

> "It would look better even though we both know Velasquez is guilty, and heaven knows I have tried to help the guy, if you would be there to at least go through the motion."

The affidavit continues in Paragraph 30 [TR. p. 441], that the Area Arbitrator was the only one who took or heard any evidence. The affidavit, in paragraph 37 [TR. p. 444], sets forth the conversation had with the Area Arbitrator soon after the Coast Arbitrator's decision was rendered, in which conversation the Area Arbitrator stated:

> "What has happened has happened and one might as well now accept the deregistration of Velasquez then try to negotiate a deal to see if Harry could have him reinstated as a Class B Longshoreman and in possibly six months to a year he may be able to be promoted to Class A. You may have to have some type of agreement that Velasquez will never run for office again to help induce the employers to reinstate him."

The statements of the Area Arbitrator clearly show that he had prejudged the case and had found Velasquez guilty even before hearing the evidence; what the Area Arbitrator wishes was someone to go through the motions of a defense, which is tantamount to asserting that a defense would be useless.

Arbitration provides by law that arbitrators be impartial and there be no corruption. An arbitrator that in substance and effect announces what his decision is going to be before the arbitration and then proceeds to arbitrate *ex parte* cannot be said to be impartial. After evidencing his partiality the arbitrator proceeded *ex* parte with the arbitration either with a pre-conceived bias which prevented him from being impartial, or with orders to proceed and find in a certain manner. By either view that award must be set aside under *9 U.S.C.A., Section 10,* for his partiality was evident and by proceeding further in his state of mind he was both partial and corrupt. Bulcke was not satisfied with finding Velasquez guilty, for after the award of the Coast Arbitrator, he intervened on behalf of defendant's attempting to have plaintiff accept the awards, which is in substance asking plaintiff to give up their right to legal redress, he suggested a solution that Velasquez agree not to run for office again, which was in violation of Section 8 (a)(1) of the Labor Management Relations Act. Bulcke was not only not impartial, his partiality and corruption continued and he placed himself in the position of being an advocate.

In *Amicizia Societa Nav. v. Chilean Nitrate and Iodine Sales Corp., supra,* (D.C.S.D. N.Y. 1959) 184 F. Supp. 116, 117, the Court stated:

> "However the decision of arbitrators can be upset if it was procured by fraud or *corruption, if there was evident partiality,* if the arbitrators exceeded their powers, or if the decision is a perverse misconstruction of the law." (Emphasis added.)

During August 1960, plaintiff's members were locked out of their employment for two weeks by defendant P.M.A. and as a condition of returning to employment the Local was coerced, with Bridges lending support to the P.M.A. into signing an agreement giving up their right to use an independent arbitrator and a new area arbitrator was appointed by Paul St. Sure, P.M.A. President, and Harry Bridges, I.L.W.U. President, to wit, Germaine Bulcke. During November 1964, when Local 13 sought to disqualify Bulcke as to an arbitration and to obtain an outside arbitrator they were refused by Harry Bridges, I.L.W.U. President and Paul St. Sure, P.M.A. President who stated that they themselves were the parties to make the decision and choice regarding the arbitrators. [Ex. 2, Pars. 38-40, TR. pp. 444-445; Ex. 2, Par. 48, TR. p. 448.] The area and coast arbitrators had been long time friends of I.L.W.U. President, Harry Bridges, and both arbitrators had been employed by defendant I.L.W.U. in positions subservient to Harry Bridges. [Ans. Interrogatory 31, TR. p. 199.]

The lower court erred in not finding that there was evident partiality and corruption on the part of the arbitrators and in not concluding therefore that the decisions of the arbitrators should be set aside. The lower Court further erred in its Conclusion Number 3 which on page 19, lines 11 to 17 thereof [TR. p. 624] which provides:

> "Local 13 and Velasquez through their Agent, ILWU, have both had their 'day in court'—fully, fairly and finally, with their right meticulously protected and honored. They lost, but only after a bitter battle in an open arena before two honest Arbitrators—Area and Coast—fair rules."

Said conclusion is not supported by either the facts or the law and is contrary to both the facts and the law.

H-2. The Arbitration Decisions Should Be Set Aside as Being in Excess of the Powers of the Arbitrators, Not Adequately Grounded in the Collective Bargaining Agreement and as Having Been Arrived at by a Manifest Infidelity of the Arbitrators to Their Obligations.

By the terms of the collective bargaining agreement, the arbitration involved, whether *ex parte* or otherwise, was extremely restricted and severely limited the powers of the arbitrators. The arbitrators not only exceeded their powers and "manifestly" disregarded both the law and the collective bargaining agreement, they showed a manifest infidelity to their obligations by not rendering opinions and decisions adequately grounded in the collective bargaining agreement; therefore, the opinions and decisions cannot be enforced and must be set aside.

The Arbitration Act 9 U.S.C., Sec. 10 (d) provides as grounds for setting aside an arbitration award as follows:

> "Where the arbitrators have exceeded their powers, * * *."

In the present matter, Section 17.52 of the Pacific Coast Longshore Agreement [Ex. A attached to the complaint] provides in part as follows [TR. p. 53]:

> "Powers of the arbitrator shall be limited strictly to application and interpretation of the agreement as written. . . ."

Section 17.53 provides in part:

> "Arbitrators' decisions must be based upon the showing of facts and their application under the specific provisions of the written agreement and be expressly confined to, and extend only to, the particular issue in dispute."

Section 17.62 provides in part:

> "The arbitrator shall act with his powers limited strictly to the application and interpretation of the Agreement as is written."

Section 22.1 provides:

> "No provision or term of this Agreement may be amended, modified, changed, altered or waived except by a written document executed by the parties hereto."

The provisions out of which the arbitration purportedly arose was Section 17.81 of the Pacific Coast Longshore Agreement. Its applicable portion is as follows:

> "17.81 All longshoremen shall perform their work conscientiously and with sobriety and with due regard to their own interests shall not disregard the interests of the employer. Any *employee* who is guilty of deliberate bad conduct *in connection with his work as a longshoreman* or through illegal stoppage of work shall cause the delay of any vessel shall be fined, suspended, or for deliberate repeated offense, cancelled from registration . . ." (Emphasis added.)

Section 1.71 defining longshoreman provides:

> "The term 'longshoreman' as used herein shall mean any man working under this Agreement."

The power of the arbitrator under Sections 17.52, 17.53, and 17.62 of the Pacific Coast Longshore Agreement are extremely limited twice in the agreement it is set forth that the arbitrators' powers are *"limited strictly to the application and interpretation of the agreement as written"* and Section 17.53 adds the additional restriction to the power of the arbitrator in that his decision *"must be based upon the showing of facts and their application under specific provisions of the written*

agreement * * *." In brief the limitation as to applying an interpretation of the agreement as written makes its interpretation and application one of law, and the arbitration award void as being in excess of the arbitration powers if their interpretation is contrary to law. The further provisions of Section 17.53 are such that if there is not a showing of facts to support the award that the award is also further void under Section 10(d) of the Arbitration Act as being in excess of the arbitrator's powers. Section 22.1 provides that an amendment or modification must be in writing signed by the parties.

In *Boeing Co. v. International Union United A., A. and A.I. Workers,* 231 F. Supp. 930, 932 (E.D. Penn. 1964); affirmed, *Boeing Co. v. International Union United A., A. and A.I. Workers* (3rd Cir. 1965) in denying arbitration and interpreting an agreement which provided: "The jurisdiction of the arbitrator shall be limited to a determination and application of the specific provision of this agreement at issue. * * *" the court stated:

> "(4) The exclusionary clause in the arbitration article, that the 'jurisdiction of the arbitrator shall be limited to * * * the interpretation and application of the specific provisions of this agreement at issue' can only mean that it was intended to limit the scope of arbitrable matter."

Section 17.81 strictly and clearly applies only to an employee in respect to deregistration. The provision not only specifically and clearly uses the word *"employee," it also places the bad conduct* "in connection with his work as a longshoreman." By its terms, and the terms of Section 1.71 as written, the applicable provisions of Section 17.81 only applies to an employee of performing longshore work under the Pacific Coast Longshore Agreement and any interpretation to the contrary is in

excess of the arbitrator's powers and jurisdiction and must be set aside under Section 10 (d) of *9 U.S.C.A.* The provisions of Section 17.81 being clear and unambiguous and the interpretation being limited to "the contract as written" the interpretation is one of law and an interpretation which this Honorable Court has the power to make. *Old Dutch Farms, Inc. v. Milk Drivers and Dairy Employees Union, supra,* 359 F. 2d 598; *Watkins v. Hudson Coal Co., supra,* 151 F. 2d 311.

The lower Court was correct in its Finding No. 18 K. [TR. p. 618] "That the award manifestly disregards the collective bargaining agreement and the law," but erred in not concluding that for these reasons the decisions of the arbitrators should be set aside.

Further, in this regard as set out in Points D through D-4 hereof, the *Labor Management Relations Act,* Sections 7 and 8 (a) (1) and (2) prevents the inclusion of Union officials in the interpretation of Section 17.81 and the provisions of the *Labor Management Relations Act* must be read as a part of every collective bargaining Agreement and the Agreement interpreted in light thereof.

N.L.R.B. v. News Syndicate Company, supra;
Pacific Tel. & Tel. Co. v. Communication Workers of America, supra;
Manseau v. United States, supra;
Flores v. Barman, supra.

The decision in the case of *United Steelworkers v. Enterprise Wheel and Car Corp., supra,* 360 U.S. 593 bears greater weight when one considers that the arbitration provisions of the collective bargaining agreement in that case was much broader in scope and not limited as in the present case. The collective bargaining agreement provided that any difference "as to the meaning and application" of the agreement should be submitted

to the arbitrator and the arbitrator's decision "shall be final and binding upon the parties." The Court at page 597, stated:

> ". . . Nevertheless an arbitrator is confined to interpretation and application of the collective bargaining agreement, he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from any source, *yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrators' words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the awards.* * * *." (Emphasis added.)

Neither the Area or Coast Arbitrator interpreted the contract as written, both exceeded the power under the agreement and included Union officials in the interpretation and application of Section 17.81. The Coast Arbitrator deregistered Pete Velasquez from any employment with any company under the agreement by reason of his alleged activities as a union official. In an attempt to justify his position and interpretation of Section 17.81 the Coast Arbitrator at page 7 of his decision stated (Appendix II):

> "For purposes of assessing a penalty this provision includes Union officers. They are employees only on leave when elected to Union office. * * *"

The arbitrators not only exceeded their powers in rendering their decisions, as their decisions were not adequately founded in the collective bargaining agreement, they manifested an infidelity to their obligations and dispensed their own brand of industrial justice contrary to the provisions of the decision of *United Steelworkers v. Enterprise Wheel and Car Corp., supra,* 360 U.S. 593.

The Collective Bargaining Agreement is not itself a contract of employment, it is a trade agreement with the individual contracts of employment being separate therefrom. (*MacKay v. Lowes, Inc.,* (9th Cir.) *supra,* 182 F. 2d 170); (*N.L.R.B. v. Wooster Div. of Borg-Warner Corp., supra,* 236 F. 2d 898). Therefore, during the alleged incidents of cases 5 through 12, no contract of employment existed between defendant P.M.A. and Peter Velasquez; the only contract of employment which existed was between plaintiff, Local 13, and Pete Velasquez who was a union official and an employee solely of plaintiff herein. [TR. p. 395, Velasquez Par. 5; TR. pp. 434, 435, Johnston Par. 11; TR. p. 9, Johnston, Par. 25.] Consequently, for this additional reason the provisions of Section 17.81 could not be applied to Pete Velasquez in respect to cases 5 through 12 and no arbitrable issue was raised. Whether this was an arbitrable issue or not is a matter solely within the jurisdiction of this court to decide. *Atkinson v. Sinclair Refining Co., supra.*

If it had been legal to include the employees of Local 13 in Section 17.81, which it is not, the parties did not make such an inclusion in 17.81 and having omitted Union officials therefrom the arbitrator cannot now make such an inclusion. (*Pacific Tel. & Tel. Co. v. Communication Workers of America,* (1961) 190 F. Supp. 689). Likewise, the arbitrator was bound to interpret the contract as written and any such inclusion made by the arbitrator is void as a matter of law and should be set aside.

The court in *Pacific Tel. & Tel. Co. v. Communication Workers of America, supra,* at page 693 stated:

> "* * * Where there is an exception or reservation in a contract, it is presumed that no other exceptions or reservations are intended. Fendall v. Miller, 99 Or. 610, 196 P. 381. The law will not in-

> sert by construction, for the benefit of one of the parties, an exception or condition which the parties, either by design or neglect, have omitted by their own contract. * * *"

In holding that there was no arbitrable issue, the court in *Industrial Trades Union v. Woonsocket Dyeing Co.,* 122 F. Supp. 872, 875, stated:

> "Collective bargaining agreements like other contracts are to be given a reasonable construction, not one which results in injustice and absurdity. Weaver v. United States, 8 Cir., 1954, 210 F. 2d 815."

The court further cited with approval from *Pawtucket Mach. & Supply Corp. v. Monroe,* (1947) 71 R.I. 162, the following:

> "* * * The intention sought is only that expressed in the instrument and not some undisclosed intention that the parties may have had in mind."

Section 17.81 shows no intent to include union officials therein and by its own wording excludes them, the obvious reasons being that such inclusion would be a violation of the Labor Management Relations Act and officials are not employed under the contract. To make such an inclusion would result in an injustice, absurdity and manifest disregard for the law.

In similar respect the court in *N.L.R.B. v. Gulf Atlantic Warehouse Co.,* (5th Cir. 1961) 291 F. 2d 475, 477, stated:

> "* * * We think that ordinarily the language of the contract as finally agreed upon must be construed by the courts in accordance with ordinary rules of construction without reference to the give and take of the bargaining sessions which produced the final terminology. Otherwise we would abandon completely the parol evidence rule when dealing with this type of contract."

The only award the lower court could affirm is one which grants relief under the contract, when as in the present case where the award exceeds the express written terms of the contract then the court is duty bound to set the award aside. In support thereof the court in *Woody v. Sterling Aluminum Products, Inc.,* (1965) 245 F. Supp. 755, 770, stated:

> "And the authority of an arbitrator to make such an award is dependent upon the language of the contract, so that when the Court enforces the award it is granting relief under the contract and not exercising jurisdiction independent thereof."

Also:

> *United Steel Workers v. Enterprise Wheel and Car Corp., supra,* 360 U.S. 593.

In the present case the arbitrators did not grant relief under the contract, they exercise jurisdiction independent thereof, and the lower Court correctly found the decisions of the arbitrators was a manifest disregard for the contract. [Finding No. 18, K.T.R. 618.]

Arbitration agreements in respect to the powers of the arbitrators may be broad and liberal or the powers may be limited or severely restricted. In the present case the parties chose to severely restrict the powers of the arbitrator, therefore, any award which is in excess of the power granted is void and must be set aside under Section 10 (d) of the *Arbitration Act, 9 U.S.C.A.* In the above regard the cases herein above cited involve arbitration agreements where the powers of the arbitrator were broader than in the present case. Cases may be cited in which by the terms of the arbitration agreement the powers of the arbitrator are even broader than in the above cited cases, however, such cases do not alter plaintiff's rights arising from restricted powers of the arbitrators and are therefore not

necessarily authority for any proposition in the present case.

In the case of *International Ass'n. of Machinists v. Hays Corporation,* 296 F. 2d 338, 343, the court stated:

> "The arbitrator is not a free agent dispensing his own brand of industrial justice. And if the award is arbitrary, capricious *or not adequately grounded in the basic collective bargaining contracts, it will not be enforced by the courts."* (Emphais added.)

In the case of *Continental Materials Corp. v. Gaddis Mining Co.,* 396 F. 2d 952 (10th Cir. 1962), the court stated:

> "Clearly, the decision of the arbitrators, if beyond their jurisdiction has no more effect than a similar judgment of a court."

In the present case the arbitrators exceeded their jurisdiction and dispensed their own brand of industrial justice.

The arbitrators' powers in the present case were restricted to applying facts to the contract as written. To arrive at their decisions they altered and modified the contract, contrary to Section 22.1 then applied the facts; in doing so they exceeded their powers. *J. P. Greathouse Steal Erectors Inc. v. Blount Bros. Const. Co.,* 374 F. 2d 324. They exceeded their powers to such a degree that the decisions were a manifest disregard for both the collective bargaining agreement and the law. [Finding No. 18 K., TR. p. 618.]

As was set forth in *Williams v. Pacific Maritime Association, supra,* (9th Cir.) 384 F. 2d 935, 939 in respect to Section 22 of the Pacific Coast Longshore Agreement which is before this Court:

> "But if there were an agreement to such rules, they were not adopted in accordance with the re-

quirements of the basic collective bargaining agreement which provided in Section 22: 'No provision or term of this agreement may be amended, modified, changed, altered, or waived except by written document executed by the parties hereto."

The terms of the Pacific Coast Longshore Agreement in every instance prevented the arbitrators from modifying or altering it. In the same respect acquiescence by Harry Bridges into any interpretation of the agreement was of no effect; any reliance by the arbitrators on any oral statement in respect to the meaning of Section 17.81 was in derogation of their duty to interpret the contract "as written" and a procedure which was not only in excess of their powers but a manner of obtaining the opinions and decisions by "undue means" contrary to the provisions of the *Arbitration Act, 9 U.S.C. Sec. 10.*

The lower Court erred in not considering, finding and concluding that the Arbitrators had exceeded their powers and that the decisions and opinions of the arbitrators were not adequately grounded in the collective bargaining agreement. The lower Court further erred in not setting the opinions and decisions of the arbitrators aside on the ground that they were in excess of the arbitrators' powers and not adequately grounded in the collective bargaining agreement.

H-3. The Decisions of the Arbitrators Should Be Set Aside Both on the Grounds of Actual and Constructive Fraud.

Plaintiff pled the grounds of fraud for setting the arbitration opinions and decisions aside. [TR. pp. 72-73.] The Court did not consider such grounds and erred in not doing so. The record of the arbitration adequately discloses constructive fraud and the matters

set forth in the lower Court clearly disclosed actual fraud.

The *Arbitration Act, 9 U.S.C.* Section 10(a) provides that an award may be set aside when it was procured by "fraud." In the case of *Marine Transit Corporation v. Dreyfus,* (1932) 284 U.S. 263, 52 S. Ct. 166 the Court stated:

> "We do not conceive it open to question that, where the Court has authority under statute as we find that it had in this case, to make an order for arbitration the Court also has the authority to confirm the award or to *set it aside for irregularity, fraud, ultra vires or other defects.*" (Emphasis added.)

In the case of *Anthony P. Mills, Inc. v. Wilmington Housing Authority,* 179 F. Supp. 199, 202, where the government contracting officer made serious errors in calculations, his decision was labeled constructive fraud as it constituted obvious and gross error. The Court stated:

> "Nor is it necessary, in order for the Courts to set aside such a decision, opinion or finding, that the conduct of the arbitrator amount to actual fraud. A finding of constructive fraud is sufficient. Thus, the finding or decision will be set aside *if the decision was fraudulent or was induced by such inattention or indifference to imply bad faith* (citation) *or, there is proof of constructive fraud or gross mistake of such character as to amount to palpable and substantial wrong.*" (Citation.) (Emphasis added.)

As set forth in Point H-1 hereof, the area arbitrator, before proceeding *ex parte* to hear and decide cases numbered 5 through 12, expressed his opinion at the guilt of Velasquez and requested at least a token defense. The area arbitrator then proceeded to arbitrate

ex parte and found Velasquez guilty on Case No. 10 involving the "SS ORNEFJELL" [TR. p. 401, pars. 19-27] and Case No. 9 involving the "SS KOHKA MARU" [TR. pp. 407-410, pars. 32-37], each being matters which Velasquez had handled under the advice of the area arbitrator and in doing so followed the advice of the area arbitrator. The area arbitrator further found Velasquez guilty in Case No. 11 which did not involve the Pacific Coast Longshore Agreement but which involved the I.L.W.U. - Teamster pact. [TR. pp. 403-404, pars. 28-32.]

The matters in respect to Case No. 9 the SS "ORNEFJELL", Case No. 10, the SS "KOKA MARU" and Case No. 11, which only involved the I.L.W.U. - Teamster pact, together with the manner in which the Area Arbitrator, Germain Bulcke, advised Velasquez, in advance, as to how to handle complaints, is set forth in Appendix V together with the citations in respect to the more complete facts.

The actions and findings of the area arbitrator against Pete Velasquez in the above matters was tantamount to actual fraud. The area arbitrator proceeded *ex parte* in violation of Section 17.281 of the agreement and he applied Section 17.81 to Union officials contrary to the provisions of the *Labor Management Relations Act* and the clear wording of the Section. In this respect the award of the arbitrators can be set aside if it was procured by fraud or corruption. *Amicizia Societa Nav. v. Chilean Nitrate and Iodine Sales Corp., supra.* The fraud need not be actual for constructive fraud is sufficient and exists where the decision was induced by such inattention or indifference so as to imply bad faith or where the decision was arbitrary or grossly erroneous. *Anthony P. Mills Inc. v. Wilmington Housing Authority, supra.*

The area arbitrator in proceeding *ex parte* contrary to the provisions of Section 17.281 of the agreement, and the arbitrators including Union officials in Section 17.81 contrary to the *Labor Management Relations Act* and the clear wording of the Section and Section 1.71 at the very minimum showed such an indifference or inattention as to imply bad faith, which itself is constructive fraud, even if the actions of the arbitrator were classified as a mistake, the mistake is so gross as to amount to palpable and substantial wrong which itself is fraud of a nature which voids the awards and decisions. The foregoing is supported by the court's Finding 18.K. [TR. p. 618] which found the decisions of the arbitrators to be a manifest disregard for both the contract and the law.

The area arbitrator further showed an indifference amounting to constructive fraud in that he found Velasquez guilty in case after case when the record was and is devoid of any evidence that the particular ship or ships involved were delayed, which delay is a necessary element to constitute a violation of Section 17.81 and deregistration thereunder. The coast arbitrator showed the same indifference in his review of the record and deregistration of Pete Velasquez. For these same reasons the decisions of the arbitrators not only amounted to constructive fraud but were also arbitrary, capricious and not adequately grounded in the collective bargaining agreement and should have been set aside. *International Ass'n. of Machinists v. Hayes Corporation, supra.*

In similar respect the statement of the area arbitrator, prior to arbitrating Cases No. 5 through 12, *ex parte,* that "* * * we both know Velasquez is guilty * * *." [TR. p. 440] and then requesting Curt Johnston to at least go through the motions of a hearing, show the arbitrators state of mind to be that which strongly lends to the aforesaid fraud.

The lower Court erred in not finding and concluding that the arbitrators' decisions and opinions were made and rendered as a result of fraud and therefore setting the opinions and decisions aside.

H-4. The Arbitrators' Decisions Were Obtained by Undue Means.

The *Arbitration Act 9 U.S.C.* Section 10 (a) provides that an arbitration award may be set aside when it was procured by "undue means." The broader ground of "undue means" is itself sufficient to include many of the reasons set forth in this brief for setting the decisions of the arbitrators aside. Included in such grounds is the fact that the decisions were in manifest disregard for the law as set forth in Points D through D-4 hereof, were against public policy as set forth in Point E hereof, were a result of a connivance and conspiracy as set forth in Point I hereof, and that the area arbitrator proceeded *ex parte* as previously set forth.

The lower Court erred in not finding and concluding that the decisions of the arbitrators were procured by undue means based upon each of the above included reasons and in not therefore setting the awards aside.

The pleading of the connivance and conspiracy on the part of defendants is contained in paragraph XXI of plaintiff's amended complaint. [TR. pp. 72, 73.] The uncontroverted evidence clearly proves the connivance and conspiracy of defendants to apply Section 17.81 to union officials and thereby bring about the deregistration of Pete Velasquez. Some of the more salient facts evidencing the connivance and conspiracy are summarized in Point I of this brief.

I. The Aspects of the Present Case Are Twofold, to the Extent of the Rights of Velasquez as a Member He Was Entitled to Any and All Remedies Which May Exist by Reason of Either Arbitrary, Discriminatory or Bad Faith Conduct Which Breaches the Duty of Fair Representation.

Though as previously set forth in Points A and B hereof, a breach of the duty of fair representation as set forth in the cases of *Humphrey v. Moore supra,* and *Vaca v. Sipes, supra,* is not a necessary element for plaintiff's recovery. However, the aspects of the present case are twofold. First, plaintiff has been damaged by the arbitration award as previously set forth and is entitled to its recovery vacating and setting aside the arbitration opinions and decisions as previously set forth. Secondly, plaintiff's member, and former official, Pete Velasquez, was also personally and greviously damaged by the arbitrator's opinions and decisions as set forth in point hereof.

The arbitration was brought by defendant, P.M.A. against plaintiff, Local 13, and defendant P.M.A. proceeded *ex parte* against plaintiff, Local 13, when plaintiff, Local 13, refused to arbitrate cases 5 through 12. (Appendix I.) Local 13 had a standing in the arbitration to represent the member and vindicate his rights and had the same standing in the lower court. *International Union v. Hoosier Cardinal Corp., supra,* 383 U.S. 696.

After the Area Arbitration the matter was referred to the Joint Coast Labor Relations Committee, and the Committee referred the matter to the Coast Arbitrator which was the final stage of the grievance procedure. At this higher level it was customary that the employee and Local Union be represented by officials of the International. [Finding No. 15, 16, TR. p. 615.] The Coast Arbitrator having the power to review the prior

decision. [Sec. 17,261 Pacific Coast Longshore Agreement TR. p. 53.]

In respect to any representation given or made by the International Union before the Coast Arbitrator, any participation in or regarding the proceedings at any level, the International Union owed its duty of fair representation to plaintff's member, Pete Velasquez. This duty of fair representation being one that is not derived from the collective bargaining agreement but implied from the Union's rights and responsibilities conferred by federal labor statutes, *Humphrey v. Moore, supra*, pp. 355 and 356. The same liability for breach of the members' rights also attaches to the employer, P.M.A., for its participation. *Vaca v. Sipes, supra,* pp. 178, 183 and 188.

In determining a Union member's rights and the extent of the statutory duty of fair representation, the court in *Vaca v. Sipes, supra,* at page 190, stated:

> "* * * a breach of the statutory duty of fair representation occurs only when a Union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. * * *"

The elements of the duty thereby being in the disjunctive and the duty is violated if the conduct is either *arbitrary* or *discriminatory* or in *bad faith.*

Any single one of the three elements set forth in *Vaca v. Sipes, supra,* was sufficient to show the bad faith necessary to require the arbitration decisions and opinions be set aside. However, in the present matter, all three of the elements were present.

The court in *Vaca v. Sipes, supra,* at page 178, stated:

> "Under this doctrine, the exlusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or dis-

> crimination *toward any,* to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct." (emphasis added.)

Among other matters, Harry Bridges' actions in telling Velasquez in an angry manner that he, Bridges, was the only one who could save him if the matter came before the Coast Arbitrator and then telling Velasquez that he was done, through and all washed up [TR. p. 447]; Int. No. 31, TR. pp. 202, 203] taken together with Bridges acquiescing the P.M.A.'s position, before the Coast Arbitrator, that Section 17.81 applied to Union officials, when such a position was flagrantly against Union principles [Finding No. 1, TR. p. 618] and the fact that never before had Section 17.81 been applied to Union officials, though if such application was possible, which it is not, greater cause had previously existed to apply it against other officials [TR. p. 397], clearly shows the action to have been arbitrary and also discriminatory and in bad faith.

In similar respect the sacrificing of Pete Velasquez to gain the arbitration in the belly packing matter [TR. p. 424], taken with the fact that both defendants had previously jointly deregistered 81 men to get to another man, Stanley Weir, a critic of Bridges and the Pacific Coast Longshore Agreement, and deregister him [TR. pp. 449, 450], further shows the discriminatory, arbitrary and bad faith nature of the activities of the defendants. Same is important considering the joint control of registration is a manner of eliminating criticism and opposition. [TR. pp. 449, 450.]

In addition: Bill Ward, International official, who Velasquez was to oppose in running for office, stated that the would take care of Velasquez up there. [TR. pp. 409, 410 and 432.] The P.M.A. did not make a snap decision in their deregistration of Pete Velasquez, but considered it over a long period of time. [TR. p. 203.] The P.M.A.'s Agent, Mr. McEvoy, stated

that they were out to get Velasquez for what he had done as a union official as Velasquez knew the contract too well. [TR. pp. 421, 422.] Velasquez did know the contract well. During the time he administered the contract as a union official he handled the labor disputes arising under the agreement and won substantially all of them including the arbitrations. [TR. p. 397.]

The P.M.A. blacklisted Velasquez to force the matter to arbitration and attempted to bypass the grievance procedure and have the matter heard initially before the Coast Arbitrator. [TR. p. 437.] The P.M.A. proceeded *ex parte* in violation of Section 17.281 of the Agreement. In cases No. 3 and 4, the matters were carried out pursuant to prior instructions by Bridges. [TR. pp. 419, 421; TR. pp. 416, 418.] In other cases, Velasquez was following the instructions of the Area Arbitrator, and many of the cases involved situations created by defendant P.M.A. which ultimately resulted in the discharge of employees by P.M.A. under questionable circumstances. (Appendix V.)

The opinions and decisions of the arbitrators manifestly disregarded the law and the collective bargaining agreement. [Finding No. 18 K, TR. p. 618] and both defendants had jointly engaged in a long course of conduct in harrassing plaintiff and its members. [TR. pp. 437, 438; TR. p. 410.] The Area Arbitrator announced Velasquez' guilt, even before proceedings *ex parte* [TR. p. 440] and later suggested a deal could possibly be made to re-register Velasquez if he would agree not to run for office again. [TR. pp. 434, 444.]

A more complete summary of the evidence sustaining the foregoing and the citations to the more complete statement of the facts is set forth in Appendix VI. The above matters, though only part of the matters set forth in the affidavits and answers to interrogatories, were more than ample to carry the matter to trial on the

issue of the breach of "fair representation" and to establish the breach of duty.

The lower court erred in not finding and concluding that the actions of defendant were arbitrary, discriminatory and in bad faith and were a breach of the duty of fair representation and therefore setting the arbitrator's opinions and decisions aside.

The lower court further erred in its Finding No. 19 which in substance finds any allegations inconsistent with the court's findings of fact to be untrue [TR. pp. 618, 619], and finding being in error as not supported by and contrary to the evidence and in substance finding that the duty of fair representation had not been breach and arbitrary, discriminatory and bad faith conduct had not taken place.

The lower court further erred in its conclusions Numbered III and IV and the subdivisions thereof [TR. pp. 619, 636], in that said conclusions which conclude that there was no breach of the duty of fair representation or arbitrary, discriminatory or bad faith conduct are not supported by the facts or the law and are contrary to the facts, the law and the express findings of the court.

J. The Lower Court Erred in Its Conclusion No. IV Which Is Contrary to Both Fact and Law and More Particularly in Its Conclusion No. IV-K.

The court's Conclusion No. IV involves eleven subdivisions commencing with A. and terminating with K. [TR. pp. 624, 639.] The conclusion is interpersed with factual matters, reasoning, argument and legal authority, however, the substance and effect of the conclusion is contained in the headings of each subdivision and provides as follows:

> "The ILWU did not breach its duty of fair representation * * *"

As set forth in Points A and B of the argument herein, the duty of fair representation as referred to by the courts in such cases as *Humphrey v. Moore, supra*, and *Vaca v. Sipes, supra,* has no application in respect to the setting aside an arbitration award by one who is a party to the award. Among other reasons is that the right to arbitrate arises from the Collective Bargaining Agreement and the employer Union relationship. *Woody v. Sterling Aluminum Product, Inc., supra.* On the other hand, the duty of fair representation arises from statutory labor laws, not the Collective Bargaining Agreement, and is enforced by and on behalf of, a union member who is not a party to the agreement. *Vaca v. Sipes, supra; Humphrey v. Moore, supra.*

To the extent which plaintiff herein seeks recovery on its behalf, based upon an arbitration had against plaintiff, the matter arises out of the Collective Bargaining Agreement, and plaintiff is entitled to the grounds for relief heretofore set forth and as are provided by the *Arbitration Act 9 U.S.C.,* Section 10. *General Electric Co. v. Local 20 United Electrical Radio and Machine Workers of America, supra.* Therefore, the conclusion is in error and one not supported by the record and the judgment rendered thereon is also in error and should be vacated and reversed.

In respect to the extent that the connivance and conspiracy between defendants affected the individual rights of plaintiff's member, as set forth in Point I hereof, "the duty of fair representation" was applicable.

The error in conclusion No. IV-K, is patent within the conclusion which provides [TR. p. 636]:

> *"K. The claim that the award is in manifest disregard of the collective bargaining agreement and the law does not raise any breach of ILWU's duty of fair representation.*

> It is well settled that where the parties to a collective bargaining contract have agreed to submit their disputes to final and binding arbitration, courts will not review the merits of any controversy so decided. Particularly the court will not rehear or reweigh the evidence offered at the arbitration hearing. Nor will the court substitute its interpretation of the collective bargaining contract for that of the arbitrator. These principles have been stated by the United States Supreme Court in, *United Steelworkers v. American Manufacturing Co.,* 363 U.S. 593 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960)."

First, the cases *United Steelworkers v. American Manufacturing Co.,* 363 U.S. 564 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1960), and *United Steelworkers v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1960) do not concern and have no application in respect to the duty of fair representation as set forth by the cases of *Humphrey v. Moore, supra,* and *Vaca v. Sipes, supra.*

Secondly, the above cases cited by the court are not in point in respect to the present case and the principles for which the cases are cited. When viewed in context with their facts and holdings the cases, do not either limit or bar the recovery sought by plaintiff in the lower court.

In the case of *United Steelworkers of America v. American Manufacturing Co., supra,* the Collective Bargaining Agreement provided for arbitration of all disputes between the parties "as to the meaning, interpretation and application of the provisions of the agreement." The suit was brought to compel arbitration and the lower court granted summary judgment holding that the grievance was not arbitrable, based upon

the premise that the alleged grievance was not meritorious. In reversing the District and Appellate Courts, the Supreme Court, at pages 567 and 568, stated:

> "The function of the court is very limited when the parties have agreed to submit *all questions of contract interpretation to the arbitrator* * * *" (emphasis added.)
>
> "The courts, therefore, have no business weighing the merits of the grievance, * * *",

and at page 569, stated:

> "There was, therefore, a dispute between the parties as to the meaning interpretation and application of the Collective Bargaining Agreement. Arbitration should have been ordered. * * *"

The case of *United Steelworkers of America v. Warrior & Gulf Navigation Co., supra,* was also a case to compel arbitration. The lower court took evidence going into the merits of the grievance and held that the grievance was not arbitrable. In reversing the lower courts the Supreme Court, at page 583, stated:

> "For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit to. * * *"
>
> "The grievance alleged that the contracting out was a violation of the Collective Bargaining Agreement. There was therefore a dispute 'as to the meaning and application of the provisions of this agreement' which the parties had agreed would be determined by arbitration."

The case of *United Steelworkers of America v. Enterprise Wheel and Car Corp., supra,* is the only one of the three cases which approaches being in point. The court ordered arbitration, arbitration was had and the Union moved for enforcement of its award. The Dis-

trict Court ordered compliance and the Circuit Court held the award unenforceable. The arbitration provisions provided "that any differences 'as to the meaning and application' of the agreement should be submitted to arbitration and that the arbitrator's decision shall be final and binding on the parties." At page 596 the court held that the refusal of the courts to review the merits of an award was a proper approach, and at page 597, stated:

> "Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse the enforcement of the award."

Neither *United Steelworkers v. American Manufacturing Co., supra,* or *United Steelworkers v. Warrior & Gulf Navigation Co., supra,* involved a determination in respect to arbitrator's decision. However, *United Steelworkers v. Enterprise Wheel & Car Corp., supra,* did involve such a determination. There was nothing in the *Enterprise* case, *supra,* which in any way limited the relief granted by the *Arbitration Act, 9 U.S.C.,* Section 10. In fact even though in the *Enterprise* case, *supra,* the arbitration agreement was extremely liberal and provided that the arbitrator should decide any differences "as to the meaning and application" of the agreement and the award shall be "final and binding." The court set forth therein limitations on the arbitrator's powers. These limitations being consistent with those provided by the Arbitration Act, 9 U.S.C., Section 10.

In the *Enterprise* case, *supra,* the arbitration provisions were liberal, and in the present case the arbitration provisions are extremely limited. In the present case, both Section 17.52 and 17.62 of the agreement provide that the "powers of arbitrator shall be limited strictly to the application and interpretation of the agreement as written," and Section 17.53 provides that the decision must be based upon a showing of facts and their application under specific provisions of the written agreement. Section 22.1 provides that no *provision* or *term* of the agreement may be amended, altered, modified or waived without an agreement in writing signed by the parties. In the foregoing cases the functions of the court were limited by the liberal provisions of the arbitration agreement, in the present case they are not. *United Steelworkers of America v. American Manufacturing Co., supra,* at page 567.

The distinction between the *Enterprise* and present case being that in the *Enterprise* case, *supra,* the arbitrator had more leeway before he exceeded his powers; whereas, in the present case the arbitrator was severely restricted to where the interpretation became one of law and the arbitrator had no discretion in his interpretation and exceeded his powers when he failed to interpret the contract as written and in accordance with the law. Consequently, Finding No. 18-K and Conclusion No. IV-K in respect to the awards being a "manifest disregard for the Collective Bargaining Agreement and the law" patently shows the error of Conclusion No. IV and in themselves require a reversal of the judgment. The very wording of the Finding and Conclusion show that the arbitrators exceeded their powers and dispensed their own brand of industrial justice in disregard for both the law and the Collective Bargaining Agreement "as written." The very wording of the Finding and Conclusions compels the reversal of the

judgment in favor of defendants and compels judgment in favor of plaintiff.

K. The Lower Court Erred in Its Conclusion Number II Which Is Contrary to Both Fact and Law.

The lower court's Conclusion No. 2 is set forth at page 14 of its "Decision". [TR. p. 619.] Said conclusion provides:

> "The award of the Coast Arbitrator, the award of the Area Arbitrator, as well as the decisions rendered throughout all stages of the grievance machinery were and are in complete accordance with the terms of the collective bargaining agreement between employer and union, 'Pacific Coast Longshore Agreement, 1961-1966,' particularly the terms governing the grievance-arbitration procedure.
>
> Each award and decision, 'reached after proceedings adequate under the agreement, is final and binding upon the parties, just as the contract says it is.' *Humphrey v. Moore,* 375 U.S. 335, 351 (1964) relying upon *Drivers Union v. Rose & Co.,* 372 U.S. 517, 519 (1963)."

Said conclusion is in error in that as previously set forth the Area Arbitrator and the P.M.A. proceeded to arbitrate cases 5 through 12 *ex parte* in violation of Section 17.281 of the Collective Bargaining Agreement. The conclusion is further in error in that the arbitrators awards and decisions are contrary to the facts and a manifest disregard for the law and the Collective Bargaining Agreement, being violative of both the Labor Management Relations Act and the Collective Bargaining Agreement as set forth in Points D, D-1, D-2, D-3, D-4 and D-5 hereof and violative of public

policy for the same reasons as is set out in Point F. hereof. In this regard, and in support of plaintiff's position, the lower court found that the decisions and awards were a "manifest" disregard for both the law and the Collective Bargaining Agreement. [Finding No. 18-K, TR. p. 618.]

In similar respect the conclusion disregards and is contrary to the provisions of the *Arbitration Act, 29 U.S.C.,* Sec. 10 and the grounds for relief provided and sought thereunder. Plaintiff pled and proved its grounds for relief under the Arbitration Act and public policy. The grounds for such relief and the pleading and facts in support thereof, are fully set forth in Points H, H-1, H-2, H-3, H-4 and H-5 of this brief.

The court further erred in its conclusion that the awards were "final and binding upon the parties." The error of such conclusion is set forth in Point G of this brief, which clearly sets forth the reasons why an arbitration award which by its terms may provide that it is "final and binding" is not final or binding in respect to the right to have said award set aside under the provisions of the Arbitration Act or as being against public policy or a manifest disregard for the law.

In its conclusion the lower court erred by continuing with its assumption that plaintiff could only seek relief for a violation of "the duty of fair representation" as set forth by the case of *Humphrey v. Moore, supra.* As set forth in Points A. and B. hereof, said duty was not plaintiff's primary remedy for setting the arbitrator's decision and opinions aside. However, as set forth in Point I hereof, in respect to plaintiff's right to urge the remedies of its member, Pete Velasquez, the duty of fair representation was an issue and proved by uncontroverted evidence. Therefore, the lower court further erred in its Conclusion No. II.

L. The Lower Court Erred in Its Conclusion Numbered III Which Is Contrary to Both Fact and Law.

Conclusion No. III is contained in pages numbered 14 to 19 of the lower court's decision. [TR. pp. 619-624.] The conclusion is basically a repetition of the lower court's Conclusion numbered II with citation of authority and argument in support thereof. For each of the same reasons set forth in Point K hereof, in respect to Conclusion numbered II, the lower court further erred in its Conclusion numbered III.

The lower court in its Conclusion No. III, continued [TR. p. 623]:

> "Nowhere in the record can we find any support for plaintiff's attack upon the integrity of the ILWU and of the procedures which led to the Coast Arbitrator's award and the Area Arbitrator's award, * * * Nowhere is there a factual statement, claim or allegation of fraud, deceitful action or dishonest conduct."

Whether the foregoing be either a conclusion or finding same is in error. Plaintiff, in paragraph XXI of its amended complaint [TR. pp. 72, 73], alleged fraud, corruption, evident partiality, undue means, excess of powers, indifference and manifest disregard for the facts and grossly erroneous findings and conclusions of facts, together with the connivance and conspiracy of the defendants to bring about the aforesaid acts and the deregistration of Pete Velasquez. In paragrah VI of the second cause of action [TR. pp. 75, 76] plaintiff alleged the laws and public policy which the awards were violative of.

Plaintiff fully proved the foregoing allegations by uncontroverted evidence. A summary of the evidence supporting the connivance and consiparcy is contained in Point I hereof, with a more complete summary to-

gether with the evidence references being contained in Appendix VI of this brief. Further, Appendix V hereof sets forth a summary of cases 5 through 12, as part of the connivance and conspiracy and evidencing how defendants and the Area Arbitrator contrived and created the situations which brought about the complaints against Pete Velasquez. The evidence clearly shows fraud, deceit and dishonest conduct.

The conclusion continues [TR. p. 624]:

> "The record does show that the ILWU fought on behalf of Velasquez and Local 13 against PMA in the five steps of the grievance procedure vigorously and at times even vituperatively, but always valorously and valiantly."

Whether the foregoing is a conclusion or finding same is in error as not being supported by the evidence or other findings and being contrary to the facts.

The record does show that the International appeared at one Area Labor Relations Meeting, however, it is devoid of any support given to Local 13, in fact the contrary was shown. [TR. p. 437, par. 20; TR. pp. 24-29.] The record shows that International President, Harry Bridges, told Velasquez that he, Bridges, was the only one who could save him before the Coast Arbitrator and then told Velasquez that he was done, through and all washed up. [TR. p. 447, par. 46.] Bridges then went before the Coast Arbitrator and acquiesced in the P.M.A.'s position that Section 17.81 of the agreement applied to union officials. [TR. p. 447, par. 46.] Bridge's action resulted in an award which was "flagrantly against union principles" [Finding No. I, TR. p. 618] and a "manifest" disregard for both the Collective Bargaining Agreement and the law. [Finding No. 18 K, TR. p. 618.]

Bridges explained his actions by stating that "they" had to sacrifice Velasquez to gain the belly packing is-

sue, an award which was handed down by the Coast Arbitrator on the same day. [TR. p. 424.] The record does not evidence any fight by the International on behalf of plaintiff, Local 13, but does disclose a long course of conduct on behalf of the International President, Harry Bridges, in lending support and assistance to the P.M.A. in its harassment and coercion of plaintiff Local 13, and its members. [TR. p. 448, par. 47; TR. p. 438, par. 22; TR. p. 450, par. 55.]

M. The Lower Court Erred in Its Conclusion Numbered V Which Is Contrary to Both Fact and Law.

The lower court's Conclusion Numbered V is found at page 34 of the Court's decision and page 639 of the transcript and provides as follows:

> "There is no genuine issue as to any fact material to the amended complaint herein. The amended complaint and each and every cause of action therein alleged fails to state a claim upon which relief can be granted. Plaintiff is not entitled to any relief under or by virtue to any order or judgment setting aside or vacating the Coast Arbitrator's award dated June 29, 1965, or the Area Arbitrator's award dated February 13, 1965, or either of them."

Conclusion No. V is in error in that it is not supported by the fact or the law. Defendants did not offer any affidavits or evidence in support of its motion for summary judgment and made and based their motion upon "the records, pleadings, papers and documents," previously filed in the action. [TR. pp. 330, 331.] Prior to making its Conclusion No. V the court made nineteen (19) Findings. Finding Numbered 19 provides [TR. pp. 618-619]:

> "The allegations contained in Local 13's amended complaint, to the extent that they are inconsistent with the findings of fact herein, are untrue."

The burden was on the defendants to show that there was no material issue of fact, that they were entitled to judgment as a matter of law and it was incumbent upon the defendants to show through specific facts that no issue existed. *Fowler v. Southern Bell Telephone & Telegraph Company,* (5th Cir. 1965) 343 F. 2d 150, 153. In bearing their burden defendants must produce affidavits or competent matter to overcome the allegations of the complaint. *F. S. Bower Electric Co. v. J. D. Hedin Construction Co.,* (D.C. Cir. 1963) 316 F. 2d 362, 365. Defendants showing must be complete as to all the issues raised by the pleadings. *Union Insurance Soc. of Canton, Ltd. v. William Gluckin & Co.,* (2d Cir. 1965) 363 F. 2d 946, 953.

In similar respect the evidence must be looked at in the light most favorable to the opposing party and the summary procedure should be used sparingly in complex matters or where motive and intent play leading roles and the proof is largely in the hands of alleged conspirators and hostile witnesses. *Poller v. Columbia Broadcasting System,* (1962) 368 U.S. 464, 473, 82 S. Ct. 486. There must be conclusive evidence supporting the movants theory whereby the movant is entitled to judgment as a matter of law. *Poller v. Columbia, supra,* pp. 467 and 473.

What the lower court did was to proceed without proof being introduced by defendants and find the allegations of plaintiff's complaint not to be true and granted summary judgment in favor of defendants. The lower court instead of determining whether there was an issue of fact remaining to be tried actually decided the issues of fact instead of leaving such issues to be determined at a trial. Such a procedure was improper. *Union Insurance Soc. of Canton, Ltd. v. William Gluckin & Co., supra,* pp. 951, 952.

Plaintiff was entitled to relief under the provisions of the *Arbitration Act, 9 U.S.C.,* Sec. 10. *General Electric Company v. Local 205 United Electrical Radio and Machine Workers of America, supra,* p. 548. Plaintiff alleged facts in its first cause of action to obtain such relief. [TR. pp. 72, 73.] Plaintiff was entitled relief upon the grounds that the decisions of the Arbitrators were contrary to public policy and the Labor Management Relations Act. *Local 45, International Union of Electrical Radio and Machine Workers, A.F.L.-C.I.O. v. Otis Elevator, supra.* Plaintiff alleged facts in its second cause of action to obtain scch relief. [TR. pp. 75, 76.]

In their motion for summary judgment defendants did not set forth facts evidencing that plaintiff was not entitled to such relief. However, plaintiff, in opposition to the motion for summary judgment has set forth uncontroverted facts which clearly show that plaintiff was entitled to relief on both his first and second causes of action. Said facts in relation to the arbitrators decisions being a manifest disregard for the law and a violation of public policy being set forth in Points D-2, D-3, D-4, D-5, and F. hereof. The facts evidencing plaintiff's right to relief under the Arbitration Act and pled in plaintiff's first cause of action are set forth in Points H-1, H-2, H-3, and H-4 hereof with the evidence in respect to defendants connivance and conspiracy being set forth in Point I hereof and Appendix VI and V.

The lower court erred in concluding that the complaint failed to state a claim upon which relief can be granted.

O. The Lower Court Erred in Its Conclusion Numbered VI Which Is Contrary to Both Fact and Law.

Conclusion Number VI is contained on page 34 of the lower court's "decision" and provides as follows [TR. p. 639]:

> "There is no genuine issue as to any fact material to the cross-claim and counter-claim. Defendant, Cross-Claimant and Counter-Claimant Pacific Maritime Association is entitled to relief under and by virtue of the cross-claim and counter-claim and, in particular, is entitled to an order and judgment confirming and enforcing the Coast Arbitrator's award dated June 29, 1963."

Plaintiff answered defendants counter-claim and in substance set up as a defense to the attempted enforcement and confirmation of the arbitrators decisions, the same grounds as plaintiff alleged for setting aside and vacating the decisions. [TR. pp. 293, 294.] The argument, facts and matters set forth in Point M hereof as the reasons why the lower court erred in its Conclusion Number V, and each of them, are applicable to the reasons why the lower court erred in its Conclusion Number VI.

That for brevity, the argument, matters and reasons set forth in Point M. are incorporated herein by reference thereto. That for each of said matters and reasons the lower court erred in its Conclusion Number VI and in concluding that the Coast Arbitrator's award should be confirmed and enforced.

P. The Lower Court Erred in Its Finding Number 18 and the Subdivisions Thereof and Therefore Consequently Erred in Its Conclusion Numbered IV and the Subdivisions Thereof.

The lower court's Finding Number 18 and its eleven (11) subdivisions are set forth on pages 11 through 13

of the lower court's decision. [TR. pp. 616-618.] Finding No. 18 provides as follows:

> "Local 13 has asserted that the ILWU acted arbitrarily, discriminatorily and in bad faith in processing the Velasquez grievance. More specifically, it contends that this conclusion is warranted on the basis of the following factual claims which the court, taking all facts in the light most favorable to plaintiff and for the purpose of ruling upon the motion for summary judgment, assumes to be and finds to be true:"

Finding No. 18 continues with eleven (11) subdivisions which set out certain facts as being found. The court then subsequently in its Conclusion numbered IV, and the eleven (11) subdivisions of the conclusion, concludes separately as to each of the facts found in the eleven (11) subdivisions of Finding No. 18 and as each fact separately concludes that the corresponding Finding was not a breach of the duty of "fair representation." However, the lower court did not find on all of the facts or find on the facts in a light most favorable to plaintiff. [TR. pp. 624-636.]

In considering a motion for summary judgment the evidence must be viewed in the light most favorable to the litigant opposing the motion. *Poller v. Columbia Broadcasting System, supra,* p. 473. In Finding No. 18 and the subdivisions thereof, the lower court did not view the evidence in a light most favorable to plaintiff for said findings are partial facts detached from their meaningful portions and set forth in a manner as to reduce their effectiveness and detract from their full meaning and effect. The lower court did not find upon all of the facts but found upon a portion of the facts separating them from the stronger facts which gave effect to the connivance and conspiracy.

The facts which prove that defendants were in bad faith and their actions were arbitrary and discriminatory are summarized in Point I and Appendix VI hereof. A summary of cases 5 through 12 which evidence the minor nature of the matters and the Area Arbitrator's and the defendants activities in creating the situations leading to the alleged complaints involved is set forth in Appendix V.

The lower court erred in failing to view the evidence in the light most favorable to plaintiff and find accordingly. Therefore, the conclusions set forth in Conclusion IV and the subdivisions thereof, and each of them, are also in error as being contrary to and not supported by the facts.

Further, the lower court erred in not determining whether there was an issue and in so determining leaving the issue for trial. Instead the lower court proceeded to decide the issues and erred.

Q. The Lower Court Erred in Its Finding No. 19. Said Finding Being Contrary to Both Fact and Law and Not Supported by Evidence.

The lower court's finding Numbered 19 is contained in pages 13 and 14 of the lower court's "Decision" and provides [TR. pp. 618-619]:

> "The allegations contained in Local 13's amended complaint, to the extent that they are inconsistent with the findings of fact herein, are untrue."

Instead of searching the record to determine whether there were issues of fact to be tried the lower court decided the issues by finding the allegations untrue. In doing so, the lower court erred and should have left the issues for trial. *Empire Electronics Co. v. United States,* (2d Cir. 1962) 311 F. 2d 175, 179, 180.

In substance without support of evidence and with the contrary facts shown, the effect of the court's Finding numbered 19 was to find as follows: The decisions of the arbitrators was not a discharge for union activities, contrary to Sections 7 and 8 (a)(1) of the L.M.R.A. as was set forth and supported in Point D-2 hereof. The decisions of the arbitrators were not a means for the employer to dominate and coerce plaintiff and interfere with the administrative of plaintiff local and deprive plaintiff's member of representation of their own choosing contrary to Sections 7 and 8(a)(1) and 2 of the L.M.R.A., as set forth and supported in Point D-3 hereof. The decisions of the arbitrators was not an award of damages against a union official contrary to the provisions of the L.M.R.A., as set forth and supported by Point D-4 hereof. The decisions of the arbitrators were not contrary to public policy and the naional labor policy as set forth and supported by Point F. hereof.

Each of the above matters were matters which arose from the allegations of plaintiff's second cause of action. [TR. pp. 75, 76.] In similar respect, plaintiff's first cause of action provided other and further allegations for setting the decisions of the arbitrators aside as provided by the *Arbitration Act, 9 U.S.C.,* Sec. 10. [TR. pp. 73, 74.] Each of these allegations were set forth and supported in Points H-1, H-2, H-3 and H-4 hereof. Without support in the evidence and contrary to the evidence submitted the lower court by its Finding numbered 19 found each of said allegations and matters untrue.

The lower court erred grievously in its Finding numbered 19 and its decisions should therefore be reversed in its entirety.

Conclusion.

For each and all of the reasons set forth herein this Honorable Court should reverse the judgment of the lower court which granted summary judgment against plaintiff and appellant and in favor of defendant and appellee, Pacific Maritime Association, and which dismissed the amended complaint on the merits, confirming and enforcing the opinions and decision of the Coast Arbitrator, Sam Kagel. That this Honorable Court should reverse said judgment in its entirety and remand the matter with directions that judgment be entered vacating and setting aside the opinions and decisions of the Area and Coast Arbitrator which are invalid and void as a matter of law or in the alternative said matter be remanded for trial on the issues.

Respectfully submitted,

KENNETH W. GALE,

Attorney for Appellant, International Longshoremen's and Warehousemen's Union, Local 13.

Certificate.

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

KENNETH W. GALE

APPENDIX I.

Opinion and Decision of Germain Bulcke, Area Arbitrator, Wilmington, California, February 12, 1965.

In Arbitration Proceedings Pursuant to Current Pacific Coast Longshore Agreement.

In the Matter of a Controversy Between Pacific Maritime Association, Complainant, and International Longshoremen's and Warehousemen's Union, Local 13, Respondent. #5-65.

ISSUE: Employers' Complaints Filed Against Pete Velasquez, #3449, (New No. 31090) Claiming Violations of Current Agreement.

These hearings were held in the P.M.A. Conference Room on January 4, 5, 6, 1965, in accordance with an agreement reached at the Joint Area L.R.C. Meeting #12-64, dated December 14, 1964. Appearances are recorded in the transcript.

The Minutes of the Joint Area L.R.C. Meeting #12-64 dated December 14, 1964, record that, "The Employers requested that a Court Reporter be utilized for a transcript of the hearings on complaints filed against P. Velasquez, #3349, which involve the Employer motion for his deregistration. Union held this request in abeyance."

At the beginning of this hearing, the Union stated that they did not believe a transcript should be made.

The Employers' position was that the dispute was of general significance (Section 17.64); that the formal procedure would be necessary to settle the issue, and a transcript should be made.

The Arbitrator sustained the Employers' position, and a full and complete record of the proceedings was made by a Certified Shorthand Reporter.

It should be noted that shortly before the conclusion of the first day's session (January 4) the Union stated that, "Local #13 will not participate in any arbitrations in regard to Mr. Velasquez as he was employed as a Business Agent of the night side, representing Local #13 as an independent Business Agent, and we are not going to participate in arbitrations regarding these complaints." (Tr. P. 121)

The Employers then stated, "Under these circumstances, the Employers have no choice but to insist that in view of the flat refusal of the Union to participate in any further hearings of these disputes, that these hearings be continued on an ex parte basis." (TR. P. 125-126)

During the second day's hearing (January 5), Mr. MacEvoy for the Employers, stated, "We would then have to ask the arbitrator to rule as to whether or not he will hear these cases ex parte. I believe that Section 17.61 is here involved." (TR. P. 170.)

The Arbitrator ruled that in accordance with the provisions of Section 17.61, these hearings would be continued on an ex parte basis. (TR. P. 171, 172) Thus, the remaining 8 Employer complaints were heard on an *ex parte basis.*

It was agreed and understood that any findings made by the Arbitrator based on the complaints, testimony, and the record made in these hearings will deal only with Pete Velasquez and not with any other person or persons or gangs that may be named as being involved in the same situation. (TR. P. 202-203)

CASE #1

Involves Employer Complaint #212, Minutes of Joint L.R.C. Meeting #129-64, dated August 26, 1964, Item #14 - Page 5, record as follows:

"E.C. #212 - P. VELASQUEZ, #3349, F. PATRICIO, #2993 - REFUSAL TO WORK AS DIRECTED - S.S. GERINA, BERTH #231 - 7/11/64 - CRESCENT WHARF & WAREHOUSE COMPANY.

Messrs. Velasquez and Patricio, deckmen in M.U. #1 in #3 Hatch, were directed to work extended time to finish and sail vessel. They called replacements at 3:00 A.M., without sufficient reason. Their replacements arrived at 3:15 A.M., but were not accepted by the Employer. The men left the job, resulting in loss of the gang because of insufficient men to continue work. Disagreement reached."

Minutes of Joint L.R.C. Special Meeting #152-64, dated October 1, 1964, record that E.C. #212 was discussed; no agreement reached, and the complaint referred to the Area L.R.C. for disposition.

Minutes of Joint Area L.R.C. #12-64, dated December 14, 1964, record that disagreement was reached and the Employers referred the complaint to arbitration.

OPINION AND DECISION:

Having carefully studied the lengthy record made (TR. P. 3-34), it is the Arbitrator's decision that Pete Velasquez had a reasonable and bona fide purpose for leaving the job and replacing himself at 3:00 A.M., and is not guilty of refusing to work as directed as claimed in E.C. #212.

CASE #2

The Employers submitted copies of Minutes of the Joint L.R.C. Meetings #35-59, dated April 7, 1959, and Joint L.R.C. #41-62, dated April 11, 1962.

Minutes #35-59 record the following:

"Sp. E.C. #61 complaint by West Coast Terminals against P. M. Velasquez, #3349, working aboard the S.S. JAPAN BEAR during the night shift of February 19, 1959. The complaint states that Pete Velasquez failed to show back on the job at 11:00 P.M., following the evening meal period. The remainder of the gang would not work with a replacement, and quit. *Disposition:* #3349 was reprimanded by the Union and instructed to report to future jobs on time."

Minutes #41-62 record the following:

"E.C. #386. This complaint was filed by Associated-Banning Co. against the Union business agent for violation of Section 16(B) of the Basic Longshore Agreement and the August 25, 1960 Settlement Document." The complaint states that the Union business agent boarded the S.S. LOCH LOYAL at Berth 190 on September 11, 1960 without notifying company supervision that he was on the job. The Committee agreed the contract provision must be complied with. The provision states that: "In order that the Employer may cooperate with the business agent in the settlement of disputes, the business agent shall notify the representatives designated by the Employers before going on the job."

"The Committee agreed that on the basis of this understanding, the complaint is resolved."

OPINION AND DECISION:

The record shows that the purpose for the introduction by the Employers of the Minutes of L.R.C. recording the disposition of the complaints filed against Pete Velasquez as a part of his work record, was to establish the Employer's contention that he is a continuous and repeated offender.

It is the Arbitrator's opinion and decision that the Minutes of the L.R.C. clearly record that the Joint L.R.C. Committee had agreed that Pete Velasquez had been found to have violated the provisions of the Longshore Coast Agreement and as such it becomes part of his work record. However, the disposition by the Joint L.R.C. on the complaints filed in *1959* and *1960* do not sufficiently support the Employers' contention that Pete Velasquez is a continuous and repeated offender.

CASE #3

E.C. #373 - Minutes of Joint L.R.C. Meeting #194-64, dated December 3, 1964, record the following:

"E.C. #373 - U.C. #634 - GANG #44 - REFUSAL TO WORK AS DIRECTED - S.S. PRESIDENT QUEZON, BERTH #144-12/1/64, MARINE TERMINALS CORP.

The Employer complaint states that: Gang #55 was turned to at 6:00 P.M. on the PRESIDENT QUEZON and assigned to work in #4 hatch. They refused to work this hatch, demanding that the midshift boom be given a static test, due to the fact that the day gang had dropped the boom at approximately 8:00 A.M. that morning. Gang #55 was shifted to #6 hatch while a Special L.R.C.

Meeting was held to discuss the validity of the gang's claim that the gear was unsafe to work. After the committee had reached disagreement with respect to the safety of the operation, an arbitration was held. The Arbitrator ruled that the boom was not unsafe and the men were to run to and work as directed by supervision. The men were directed to turn to at 11:00 P.M. and refused, resulting in each man being fired for refusing to abide by the Arbitrator's decision to work #4 hatch as directed by supervision, thereby creating a work stoppage and delaying the departure of the vessel.

Disagreement reached, and referred to Area L.R.C."

Minutes of Joint Area L.R.C. #12-64 dated December 14, 15, 1964 record that disagreement was reached on E.C. #373 - U.C. #634, and following disagreement, the Employers referred complaint to arbitration.

OPINION AND DECISION:

The position and contentions of the parties regarding the above noted complaints was discussed at great length during these hearings (TR. P. 66-118). Having considered the record made, it is the Arbitrator's decision that Pete Velasquez by his actions *did violate* Sections 11.21, 11.31, 17.82 and 18.1 of the Current Agreement.

CASE #4

E.C. #363 - IMPROPER ORDERING OF REPLACEMENTS - S.S. MICHIGAN 11/23/64 - CRESCENT WHARF & WAREHOUSE COMPANY.

The Minutes of Special L.R.C. #189-64 record that the issue was discussed but no agreement reached.

The Minutes of the Joint Area L.R.C. record that disagreement was reached on E.C. #363, and following disagreement the Employers referred the complaint to arbitration; also, following discussion of several tentative dates, the committee agreed that an arbitration hearing would be scheduled starting at 10:00 A.M. Monday, January 4, 1965. *At this hearing,* January 4, 1965, it was stated that the above noted minutes had not been signed. The parties, in accordance with a suggestion made by the Arbitrator, held a meeting on the morning of January 5, in order to get minutes acceptable to both sides. They were not successful. The following statement was made by Mr. MacEvoy for the Employer: "It is unfortunate that the parties were unable to reach agreement on the minutes, the draft minutes of meeting of November 24, but we believe that the case can be heard on the basis of a stipulation by both parties that the case has been heard at the local level and has been heard at the Area level on December 14, and the Employers would offer this stipulation if the Union is willing to so stipulate."

Mr. Johnston: "All right." (TR. P. 130-131)

The Employers stated that, "In the case of the S.S. MICHIGAN, we have an Employer complaint, E.C. #363, filed by Crescent Wharf & Warehouse Company, dated November 24, 1964, involving a dispute on the S.S. MICHIGAN at Berth Long Beach 4. The complaint states, after listing

the names and work numbers and categories of the men in Ship Gang #55, including hatch tender, winch driver, four holdmen, four swingmen and two frontmen: 'The above men were directed to work extended time to finish the vessel for sailing. They all called replacements for 3:00 A.M. The replacements were not accepted by the Employer and the above men refused to continue work and walked off the job.' (TR. P. 131)

"It is the Employers' contention that this gang, acting in concert, with Mr. Velasquez as winch driver and steward, deliberately refused to work beyond 3:00 A.M., in violation of Section 3.146, and Section 11 and deliberately created a work stoppage aboard the vessel." (TR. P. 136)

OPINION AND DECISION:

The above case. E.C. 363, was discussed at great length (TR. P. 131-170). The Arbitrator noted that a copy of a letter was submitted by Mr. Velasquez as the reason why he deemed it necessary to replace himself at 3:00 A.M. The letter reads as follows:

"Dear Sirs: This is to verify that Mr. and Mrs. Pedro Velasquez had an appointment with me on November 24, 1964, at 9:00 A.M. This appointment was made November 22, 1964, and was kept by Mr. and Mrs. Velasquez. Sincerely yours, Roy Shaw, Real Estate, Donald W. Shaw. Dated December 10, 1964." (TR. P. 141)

The record, however, clearly shows that the gang, including P. Velasquez, had taken the position that they did not intend to work extended time, but would only work to fulfill the eight-hour guarantee.

The contention of the Employers that this gang, acting in concert, with Mr. Velsasquez as winch driver and steward, deliberately refused to work beyond 3:00 A.M. in violation of Section 3.142, and Section 11, and deliberately created a work stoppage, *is sustained.*

It must be noted that all the remaining cases were heard *on an ex parte basis.*

CASE #5

"E.C. #196 - REFUSAL TO WORK AS DIRECTED - S.S. KOREAN BEAR BERTH S.P. 91, S.S. PRESIDENT HAYES, BERTH S.P. 93-B 8/4/63—ASSOCIATED BANNING COMPANY.

Minutes of Joint L.R.C. Sp. Meeting #192-63, November 12, 1963, record that disagreement was reached and the complaint referred to Area L.R.C. *Minutes* of the Area L.R.C. Meeting #2-64, February 21, 1964, on E.C. #196, record that:

"The Committee agreed that in accordance with Section 3.143, men and/or gangs may be ordered to shift from a job or ship where they have not completed their original assignment to permit a late start on another job or ship or in order to fill out the 8-hour guarantee, or in order to finish the second ship for shifting or sailing. The Committee also agreed that the men involved in this complaint were obligated to shift to the S.S. PRESIDENT HAYES for working an extended shift in order to finish this vessel for sailing.

"Employers moved that the business agent, Pete Velasquez, violated the contract and the August

25, 1960 Settlement Document, Paragraph 4(d) by improperly directing the men to leave the job, thereby precipitating the work stoppage on this job. The Employers moved that the four men involved, and the Union business agent, Pete Velasquez, be assessed the penalty of five days off all work with 40 hours added to their check-in time.

"The Union disagreed with the Employers' motion, stating it was their understanding the four men involved in this complaint were innocent victims of circumstances. Union stated a thorough investigation revealed that the men followed erroneous instructions.

"Following disagreement the dispute was referred to the Area Arbitrator for decision."

OPINION AND DECISION:

The record clearly shows that the Area L.R.C. agreed that the four men involved should have shifted and worked to finish the second ship for sailing, and did violate Section 3.143. The statement by the Union that the men followed erroneous instructions issued by the business agent fully support the Employers' contention that the business agent improperly directed the men to leave the job, resulting in a work stoppage. The Employers' motion that "The business agent, Pete Velasquez, violated the contract and the August 25, 1960 Settlement Agreement, Paragraph 4 (d)" *is sustained.*

CASE #6

E.C. #30 - REFUSAL TO WORK AS DIRECTED/WALK OFF - S.S. PRESIDENT McKINLEY, BERTH 93-B, 1/22/64, ASSOCIATED BANNING CO.

This complaint was discussed in the Joint L.R.C. Meeting #15-64, February 5, 1964. The details are recorded in the minutes of that meeting and the Employers made the following motion that:

"The Union business agent, P. Velasquez, be assessed the appropriate time off under Section 4 (d) of the August 25, 1960 Memorandum of Understanding for causing and participating in an illegal work stoppage."

The Union voted "No" on the Employers' motion and the issue was referred to the Area L.R.C. for disposition.

The Minutes of the Joint Area L.R.C. Meeting #5-64, May 6, 1964, record that E.C. #30 was discussed and the Union voted "No" on the above quoted Employer motion, and the complaint was referred to arbitration.

OPINION AND DECISION:

The record made in this hearing clearly establishes that the business agent, P. Velasquez, failed to follow the steps of the grievance machinery. The motion made by the Employers that the business agent, P. Velasquez "caused and participated in an illegal work stoppage" in violation of the August 25, 1960 Memorandum of Understanding, *is sustained.*

CASE #7

E.C. #21 - SHIP GANG #62 - REFUSAL TO WORK SHORTHANDED - S.S. CALEDONIA STAR - BERTH 228 E, 1/15/64 - MARINE TERMINALS CORP.

The Minutes of Joint L.R.C. Meeting #8-64, January 22, 1964, record in detail the discussion on this

complaint by the Committee; also, that the Employers made three motions on which the Union voted "No." The Committee agreed to refer the entire matter to the Area L.R.C.

The Minutes of Area L.R.C. Meeting #4-64, April 30, 1964, record that following a review of Employer Complaint, E.C. #21, the Employers repeated the motions made in the L.R.C. Meeting #8-64, 1/22/64, with the Union voting "No." The Employers referred the complaint to arbitration.

It was agreed in this hearing that only the motion dealing with P. Velasquez was before the Arbitrator (TR. P. 202-203). The motion reads as follows: "That the business agent, P. Velasquez, be assessed the appropriate time off under Section 4 (d) of the August 25, 1960 Memorandum of Understanding for causing and participating in an illegal work stoppage in violation of Section 11.31, Section 17.71 and Section 17.81 of the Contract."

OPINION AND DECISION:

The record made at this hearing fully supports the Employers' contention that the business agent, P. Velasquez, by his actions had violated Sections 11.13, 17.71 and 17.81 of the Contract. The above quoted motion made by the Employers as recorded in the Area L.R.C. Minutes #4-64, April 30, 1964, *is sustained.*

CASE #8

E.C. #109 - PETE VELASQUEZ, #3349 BUSINESS AGENT - CREATING A WORK STOPPAGE - S.S. MANKATO VICTORY - VIOLATION OF AUGUST 25, 1960 SETTLE-

MENT DOCUMENT, 3/24/64, MARINE TERMINALS CORP.

This Complaint was discussed in the Special L.R.C. Meeting #52-64, April 17, 1964. The minutes of that meeting record that disagreement was reached on the following Employers' motion:

"Employers move that Mr. Velasquez, #3349, be assessed the appropriate penalty for improperly instructing the gang, thereby disregarding the interests of the Employer and disrupting the normal harmony of the operation by creating a work stoppage in violation of Sections 11.31, 17.81, 17.83, and the August 25, 1960 Settlement Document. The Complaint was referred to Area L.R.C. for disposition."

The Minutes of the Joint Area L.R.C. #7-64, June 23, 1964, record that on E.C. #109 disagreement was reached, with the Union voting "No" on the above quoted Employer motion. "The Employers referred the complaint to arbitration."

OPINION AND DECISION:

The Minutes of the L.R.C. and Area L.R.C. and the record made in this hearing clearly establish that the business agent, Pete Velasquez, is guilty of creating a work stoppage in violation of the provision of the Current Agreement. The above quoted motion made by the Employers in the Area L.R.C. Meeting #7-64, June 23, 1964, *is sustained.*

CASE #9

E.C. #170 - P. VELASQUEZ, NIGHT BUSINESS AGENT - CREATING A WORK STOPPAGE IN VIOLATION OF CONTRACT - S.S.

KOHKA MARU, BERTH L.B. #28, 6/3/64 - METROPOLITAN STEVEDORING COMPANY.

The Minutes of Joint L.R.C. Special Meeting #82-64, June 4, 1964, record that disagreement was reached on a motion made by the Employers in connection with the above quoted complaint (E.C. #170). The motion reads as follows:

"The Employers move that P. Velasquez, ILWU Local #13 business agent, violated the provisions of Sections 11.2, 11.31, 15.1 and 17.15, and by participating in a refusal to work as directed, thereby caused a work stoppage in violation of the August 25, 1960 Settlement Document, Section 4 (d) and is subject to the appropriate penalty spelled out in Paragraph 4 of this Agreement.

"The Complaint was referred to Area L.R.C. for disposition."

The Minutes of Area L.R.C. Meeting #10-64, November 9, 1964, record that on the identical motion made by the Employers on E.C. #170, the Union voted "No" and the complaint was referred to arbitration.

OPINION AND DECISION:

The record made in this hearing shows that the Area L.R.C. in Meeting #10-64, November 9, 1964, agreed that in E.C. #168 and #169, the men involved in the refusal to work as directed on the S.S. KOHKA MARU, were found guilty and the complaints were "resolved with loss of wages for the remainder of the work shift as sufficient penalty in this case."

The above quoted action by the Area L.R.C. clearly establishes that the normal procedure for handling dis-

putes was not followed by the business agent, P. Velasquez, and the motion made by the Employers in the Area L.R.C. Meeting #10-64, November 9, 1964, on E.C. #170, *is sustained.*

CASE #10

E.C. 50-P. VELASQUEZ, #3349, NIGHT BUSINESS AGENT - S.S. ORNEFJELL, BERTH T.I. 262, 1/10/64 - MARINE TERMINALS CORP.

This Complaint, E.C. #50, was first discussed in the Joint L.R.C. Meeting #52-64, April 17, 1964. The minutes of that meeting read in part that:

"Union business agent refused to permit gang to complete this work in accordance with Section 3.1362 of the Contract, thereby creating a work stoppage and delay to the vessel."

Also, "The Employers moved that Mr. Velasquez, Union business agent, be assessed the appropriate penalty for ordering this gang off the vessel, thereby creating a work stoppage in violation of Sections 11.31, 3.1362, 17.71, 17.81, and the August 25, 1960 Settlement Document."

Disagreement was reached and the complaint was referred to the Area L.R.C. The complaint was discussed at several Area L.R.C. Meetings and following disagreement reached in Area L.R.C. Meeting #12-64, December 14, 1964, the Employers referred the complaint to arbitration.

OPINION AND DECISION:

The record made at this hearing does establish the fact that the shifting of the gang from the PHILIPPINE PRESIDENT GARCIA to the ORNEF-

JELL under the existing circumstances resulted in a gear priority violation. The proper procedure was for the Union to file a complaint with the Joint L.R.C. The fact that the gang was transferred back to the original vessel does in no way justify the action of the business agent in instructing the gang to refuse to continue working on the ORNEFJELL.

The motion made by the Employers as recorded in the minutes of the Joint L.R.C. Special Meeting #52-64, April 17, 1964, "That Mr. Velasquez, Union business agent, be assessed the appropriate penalty for ordering this gang off the vessel, thereby creating a work stoppage in violation of Sections 11.31, 3.1362, 17.71, 17.81 and the August 25, 1960 Settlement Document" *is sustained.*

CASE #11

E.C. #101 - P. VELASQUEZ, #3349 - MISCONDUCT, CAUSING AND PARTICIPATING IN A WORK STOPPAGE - S.S. MORMACWIND, BERTH 146 - 3/26/64, CRESCENT WHARF & WAREHOUSE CO.

The details of E.C. #101 are recorded in the L.R.C. Minutes of Special Meeting #28-64, 3/11/64, L.R.C. #197-64, December 11, 1964 and Area L.R.C. Meeting #12-64, December 14, 1964. The Area L.R.C. Minutes of Meeting #12-64, December 14, 1964, record that disagreement was reached, and the Employers referred the complaint to arbitration.

OPINION AND DECISION:

The signed minutes of L.R.C. Special Meeting #28-64, 3/11/64, clearly state that it was the Un-

ion's position that the teamsters were performing work in violation of Section 1.25 of the P.C.L.A.; further, that the Union business agent had stopped the teamsters from continuing the operation.

The transfer of the cargo from stevedore boards to teamster board by the teamsters was not in violation of the Current Agreement but was in accordance with the provisions of Sections 1.25 and 1.44.

The claim by the Employers that P. Velasquez is guilty of misconduct and causing and participating in a work stoppage in violation of the Agreement *is sustained.*

* * * *

CASE #12

E.C. #233 - WORK STOPPAGE - S.S. INDIA BEAR, BERTH #91, 7/29/64, ASSOCIATED BANNING COMPANY

The details of E.C. #233 are recorded in the Minutes of L.R.C. Special Meeting #121-64, August 12, 1964. Disagreement was reached and the Employers referred the complaint to Area L.R.C. for disposition.

The Minutes of Area L.R.C. Meeting #12-64, December 14, 1964, record that disagreement was reached and the Employers referred the complaint to arbitration.

OPINION AND DECISION:

The record made in this hearing clearly supports the Employers' position that Mr. Valesquez created and participated in a work stoppage, by instructing Ship Gang #9 to walk off the job in violation of the Contract.

The Employers' motion, recorded in the Minutes of L.R.C. Special Meeting #121-64, August 12, 1964: "That Peter Velasquez, business agent, created and participated in a work stoppage by instructing ship gang #9 to walk off the job in violation of the Contract and is thereby subject to the applicable penalties specified in the Pacific Coast Longshore Agreement and the August 25, 1960 Settlement" *is sustained.*

DATED: February 13, 1965.

/s/ Germain Bulcke
Germain Bulcke, Area Arbitrator

APPENDIX II.

Opinion and Decision of Sam Kagel, Coast Arbitrator, San Francisco, California, June 29, 1965.

In the Matter of a Controversy between Pacific Maritime Association, Complainant, and International Longshoremen's and Warehousemen's Union, Respondent.

Involving Proposed deregistration of Pete Velasquez, No. 3349.

ISSUE:

The issue in this case arises from a disagreement in the Coast Labor Relations Committee recited in Joint Exhibit 1, as follows:

> "IN RE P. VELASQUEZ - REG. #31090 (LA 12-65)
>
> The Committee now has before it the complete record made at the local and area level of the grievance machinery, including arbitration of the various complaints on which disagreement was reached. The record includes Minutes of Meeting of the Joint Longshore Labor Relations Committee, Los Angeles-Long Beach Harbor, Regular Meeting No. 194-64; Minutes of the Meeting of the Joint Area Labor Relations Committee, Los Angeles-Long Beach Harbor, Meeting No. 12-64; the Opinion and Decision of the .... Arbitrator (#5-65), dated February 13, 1965, with Reporter's Transcripts of Proceedings before the Arbitrator, dated January 4, 5 and 6, 1965; Referral of Dispute to Joint Coast LRC, LA 12-65, dated Febru-

ary 16, 1965; and Mr. Velasquez' Notice of Appeal to the Joint Coast LRC, dated February 23, 1965.

The Committee noted the Area Arbitrator found Mr. Velasquez guilty in ten of the twelve cases presented for decision. It was further noted that some of the decisions establishing guilt were based solely on Section 17 of the Basic Agreement, while others were based on Section 17 and the August 25, 1960 Memorandum of Understanding. The Coast Committee agrees the matter is before the Coast Committee on the ten rulings of violation of Section 17.

Based on the record before this Committee, the Employers contended that Mr. Velasquez, Reg. No. 31090, is guilty of repeated violations of Section 17 of the Pacific Coast Longshore Agreement (1961-1966), and solely under this Section 17, moved for his deregistration.

The Union members of the Committee voted 'no' and disagreement was reached."

AGREEMENT PROVISIONS:

The entire Agreement between the parties is applicable in this case. Specifically Section 17 is entitled "Joint Labor Relations Committee, Administration of Agreement and Grievance Procedures."

PMA'S POSITION:

That the International Union has a responsibility in regard to longshore locals which includes the action of local officers; that Section 18 is a "Good Faith Guarantee"; that the parties agree to observe the Agreement in good faith and "The Union commits the locals and every longshoreman it represents to observe this

commitment without resort to gimmicks or subterfuge"; that Section 11 provides that there shall be no strike or work stoppage for the life of the Agreement; that in case of grievances or disputes work shall continue; that Section 17 provides the exclusive remedy with respect to disputes; that pending investigation and adjudication of disputes work shall continue as directed and be performed as provided in Section 11; that Velasquez flagrantly ignored and violated the provisions of the Agreement, both as a working longshoreman and as a Union officer; that the Area Arbitrator found Velasquez guilty of violating the grievance procedure provisions in ten cases accruing over a period of seventeen months, nine of these cases occurring within a twelve-month period; that Section 17.81 provides that in an instance of deliberate repeated offenses a longshoreman can be deregistered.

UNION'S POSITION:

That it agrees that Section 17.81 must be read to include Union officers even though not specifically so stated; that evidence, though not supplied at the hearing before the Area Arbitrator, indicates that Case No. 5 does not in fact implicate Velasquez; that Case No. 6 does not charge a violation of Section 17 but of the August 25, 1960 Memorandum; that the Employers unilaterally violated the Agreement when they sought to keep Velasquez from working as a longshoreman even though that violation was corrected by the Area Arbitrator; that the Area Arbitrator's decisions do not specify that Velasquez' violations were "deliberate"; that the cases are marginal cases; that the penalty of deregistration is too excessive a penalty.

DISCUSSION:

Area Arbitrator's Award of February 12, 1965:

The following is a summary of the cases decided by the Area Arbitrator:

Case No. 1: Velasquez found not guilty of refusing to work as directed.

Case No. 2: The disposition by the Joint LRC on the complaints filed in 1959 and 1960 do not sufficiently support the Employers' contentions that Velasquez is a continuous and repeated offender.

Case No. 3: Velasquez did not violate Sections 11.21, 11.31, 17.82 and 18.1 of the current agreement.

Case No. 4: The contention of the Employers that this gang, acting in concert with Velasquez as winch driver and steward, deliberately refused to work beyond 3:00 A.M. in violation of Section 3.142 and Section 11, and deliberately created a work stoppage, is sustained.

Case No. 5: The Employers' motion that "The business agent, Pete Velasquez violated the contract and the August 25, 1960 Settlement Agreement, Paragraph 4(d)", is sustained.

(The Union now claims that Velasquez was not on duty on the date involved as business agent.)

Case No. 6: The motion made by the Employers that the business agent, P. Velasquez "caused and participated in an illegal work stoppage" in violation of the August 25, 1960 Memorandum of Understanding, is sustained.

(The Union now argues that this decision was not a violation of the Basic Agreement between the parties.)

Case No. 7: Velasquez found to have violated Sections 11.13, 17.71 and 17.81 of the contract.

Case No. 8: Velasquez would found guilty of creating a work stoppage in violation of the Agreement.

Case No. 9: Velasquez found guilty of violating provisions of Sections 11.2, 11.31, 15.1, 17.15, and participated in a refusal to work as directed thereby causing a work stoppage.

Case No. 10: Velasquez found guilty of creating a work stoppage in violation of Sections 11.31, 3.1362, 17.71 and 17.81.

Case No. 11: Velasquez found guilty of misconduct and causing and participating in a work stoppage in violation of the Agreement.

Case No. 12: Velasquez found guilty of creating and participating in a work stoppage in violation of the Agreement.

Comment on Award:

The Area Arbitrator's Awards covered incidents during a seventeen-month period. If we exclude from consideration Cases No. 5 and 6, Velasquez was still guilty of agreement violations in eight cases. Virtually all of them involved violations in failing to use properly the grievance procedure and causing illegal work stoppages. Velasquez caused these violations when a working longshoreman, a steward or Union officer.

Standard of Conduct:

The Agreement is specific and clear as to the manner in which grievances are to be processed. And is specific in prohibiting illegal work stoppages.

All longshoremen, while working as such, are required to observe all of the terms of the Agreement. Union officers, including stewards, are bound by an even higher standard of conduct than might, in some circumstances, be required of a working longshoreman. Officers and stewards have the affirmative duty to enforce the Agreements as written.

Velasquez was at times a working longshoreman, a steward and a Union officer. He was familiar with the Agreement machinery to process grievances. He knew that illegal work stoppages were prohibited. Clearly the applicable provisions of the Agreements on these matters were repeatedly called to his attention. However, he persisted in a course of conduct for which no excuse can be accepted. Nor was any in fact offered.

It is argued that deregistration is not in line with other penalties provided for in the Agreement for such offenses as pilferage, etc. However, the parties themselves agreed that deregistration was a proper penalty. Section 17.81 provides in part that "Any employee who is guilty of deliberate bad conduct . . . through illegal stoppage of work . . . shall . . . for deliberate repeated offense [be] cancelled from registration."

For purposes of assessing a penalty this provision includes Union officers. They are employees only on leave when elected to Union office. They retain their rights under the Agreement. They also are bound by

the obligations provided for in the Agreement to conduct themselves properly and not to cause illegal work stoppages.

This was clearly the intent of the parties derived from Section 17 and the tenor of the entire Agreement. The parties did not intend that a working longshoreman was to be prohibited from indulging in bad conduct and causing illegal work stoppages while at the same time a Union officer had an immunity as to such prohibited conduct. Or that the Union officer could escape the penalty that could beset a working longshoreman for such prohibited conduct. The Union concedes this.

The Area Arbitrator's Awards found Velasquez guilty in case after case of having violated Section 17 of the Agreement. Velasquez' course of conduct consisted of deliberate repeated offenses in causing illegal work stoppages. The penalty which the parties themselves wrote into the Agreement for such conduct is proper and appropriate in this case.

DECISION:

The Employer's motion to deregister Pete Velasquez, Reg. No. 31090, is granted and he shall be deregistered forthwith.

Sam Kagel,
Coast Arbitrator.

APPENDIX III.

Evidence Re: Sole Employment of Velasquez.

The *affidavit of Pete Velasquez* (TR. p. 393) shows in paragraph 3, page 2, Velasquez' long employment in the longshore industry, how his deregistration prevents him from working under the Pacific Coast Longshore Agreement or in the longshore industry, and in paragraph 4 how the defendant Pacific Maritime Association has prevented him from obtaining any longshore employment. Paragraph 5, page 3, sets forth that during the period of complaints numbered 5 through 12, that Velasquez was exclusively employed as a duly elected Night Business Agent and officer of plaintiff and solely employed as a salaried officer and not employed or engaged by any other person, persons, or entity. Paragraph 6 sets forth that while Velasquez was a Night Business Agent that he did not perform any function under the Pacific Coast Longshore Agreement or engage in any longshore activity as a working longshoremen or otherwise. Paragraphs 7 through 9 on pages 3 through 5 sets forth that his activities as a Night Business Agent were carried out pursuant to Section 4 of plaintiff's Constitution and By-Laws under the direction of his superior officers.

The *affidavit of Robert Carney* (TR. pp. 421, 422) sets forth in paragraph 22, page 8, that on the night following the incident involved in Case No. 3, December 2, 1964, that Mr. McEvoy, who was in charge of the defendant Pacific Maritime Association, in the Wilmington-Long Beach area, told him that they were out to get Pete Velasquez for the things he had done as a Business Agent and when asked "why" by Carney, McEvoy said, "Pete knows the contract too well." Velasquez as

a union business agent had won substantially all of the labor disputes arising under the Pacific Coast Longshore Agreement and substantially of the arbitrations. (TR. p. 397, Velasquez par. 9)

The *affidavit of Curt Johnson,* Local 13's President, (TR. p. 431) in paragraph 11, page 4, sets forth that Velasquez was a duly elected official of Local 13 and Night Business Agent whose duties were to enforce the provisions of the Pacific Coast Longshore Agreement on behalf of Local 13 and that during such time Velasquez performed no function or employment under the Pacific Coast Longshore Agreement. Paragraphs 25 and 26, page 9, set forth that cases numbered 5 through 12 arose while Velasquez was solely employed as plaintiff's Night Business Agent and was not performing work under or pursuant to the Pacific Coast Longshore Agreement as either an employee, longshoreman, or otherwise and that he refused to arbitrate said cases and withdrew from all arbitrations and refused to enter into any arbitration of said cases on the stated ground that to arbitrate such cases was against both Federal and State laws and that an arbitration regarding a union official did not come under Section 17.81 of the Pacific Coast Longshore Agreement. Paragraphs 30 and 31, page 11, sets forth that the defendants did not avail themselves of Section 17.281 of the agreement and allow the matter to move automatically to the next higher level but thereafter conducted an ex parte arbitration without any contention that work was not being continued as required by Section 11 of the agreement. Paragraph 43, page 16, sets forth that defendant Pacific Maritime Association deregistered Pete Velasquez and by unilateral action has prevented him from being dispatched to any job under the Pacific Coast Longshore

Agreement. Paragraph 44, page 16, sets forth that defendant PMA is enforcing the arbitrators' opinions and decisions to the detriment of Local 13 and using same to bring similar charges against other officials of Local 13.

In the answer to *Interrogatory No. 31,* (TR. p. 203, lines 20 to 25) it is further set forth that subsequent to the deregistration of Pete Velasquez that the PMA area manager stated that the decision on the part of the PMA to deregister Pete Velasquez was not a snap decision but had been considered for a long period of time prior to action having been taken.

APPENDIX IV.

Evidence Re: Coercive Effect of Arbitrary Opinions and Decisions Upon Local 13 and Membership.

The *affidavit of Patrick Leonard* (TR. p. 412), page 1, line 29, to page 2, line 2, shows that he is a duly elected Night Business Agent of plaintiff and solely employed by plaintiff and not employed as a longshoreman or under the Pacific Coast Longshore Agreement in any manner. The affidavit continues on page 2, lines 3 to 18, setting forth that since the deregistration of Pete Velasquez that on two occasions and while attempting, on behalf of LOCAL 13, to adjust contract violations carried on by the employer that the employer members of the PMA stated to him, in a threatening manner, that he could end up deregistered like Pete Velasquez and that to his personal knowledge, that other officials of LOCAL 13 have been similarly threatened and one has been so threatened a great many times, however, said officials were then attending a caucus at San Francisco and unable to make affidavits on their own behalf. On page 3, lines 18 to 22, the affiant sets forth that the threats have a serious effect on affiant and LOCAL 13 and interfered in the administration of the Pacific Coast Longshore Agreement, the administration of the LOCAL and the effectiveness of the officials in protecting the rights of the members.

The *affidavit of Curt Johnson* (TR. p. 431) in paragraph 44, commencing on page 16, sets forth that defendant PMA is enforcing the decision to the damage and detriment of LOCAL 13. The affidavit sets forth that the PMA has filed charges of violation of Section 17.81 against a union official, Chuck Brady, for carrying out his duties as a Night Business Agent and acting

solely in the scope of his employment and while solely on the payroll of plaintiff and while the said Chuck Brady was not employed as a longshoreman or under the Pacific Coast Longshore Agreement. The paragraph sets forth the coercive effect upon the officials and members and how it hampers and coerces officials in the performance of their duties and has interfered with the administration of the LOCAL and the right of the membership to be represented by and bargain through officials of their own choosing.

The *affidavit of Pete Velasquez* (TR. p. 394, 395) paragraph 4, page 2, sets forth how, due to his deregistration and being deprived from working in the industry, he will not again be eligible to run for office while he is deprived from working in the industry. The affidavit at page 394, lines 25, 29, sets forth that under the Constitution and By-Laws of the LOCAL that an official can only stay in office for a maximum of two (2) years, they must be out of office for an equal length of time before he can run for office again. Same clearly shows the coercive effect of the opinions and decisions of the arbitrators for if an official does not please the employer he may never be able to return to his former employment, consequently he will never be able to qualify to run for office again.

APPENDIX V.

Cases Under Which Velasquez Was Found Guilty.

The *affidavit of Peter Velasquez* (Exhibit 1) sets forth in paragraph 9 (TR. p. 397), how affiant as a Business Agent for LOCAL 13 engaged in and handled the working labor disputes arising from the members' performance of work and that he had won substantially all of the disputes including many arbitrations of which he won substantially all. The affidavit shows that the winning of many of the disputes was a direct result of talking to the area arbitrator, Germain Bulcke, after a problem arose and before action was taken and the arbitrator would frequently tell him in advance as to how he would rule. The affidavit shows that as to two of the alleged violation he was following the instructions of the area arbitrator.

Case Number 3 involved the "SS President Quezon" and is set forth in paragraphs 11 through 21 of the affidavit of Robert Carney (TR. pp. 419-421) sets the matter forth. The day gang had dropped and damaged the outboard boom on Hatch No. 5 and Carney requested a static test of the boom. The gang was shifted to Hatch No. 6 to work in the interim. The Federal Safety inspector came out and recommended a static test. That the area arbitrator came out at about 10:30 P.M. and first stated that he didn't believe the matter was arbitratable as he was not a safety engineer and then without even a visual inspection ruled that the boom was safe.

The affidavit shows that the boom could have been given a static test in a relatively short period of time but was refused. Carney then offered to have the gang work any other hatch or work Hatch No. 4 with a

swinging boom or in the alternative the gang would replace themselves, which would be done in a short period of time, and give up their hatch priority, these offers were refused and the gang discharged.

PMA area manager, John McEvoy, conceded that the men had a right to call replacements in a safety dispute (Exhibit 6-A, page 116), and Section 11.41 of the Pacific Coast Longshore Agreement so provides. (TR. p. 53) The static test would have taken about 45 minutes and cost about $50.00 and it would have taken about ten (10) minutes to have sent down a new gang that was waiting at the hall. (Answer to Interrogatory No. 7.) (TR. pp. 185-186) If a static test had been given and the boom passed, the gang which was fired at 11:00 P.M. could have been working the hatch by 7:30 P.M. (TR. p. 420 Carney par. 18)

Exhibit (1), the affidavit of Pete Velasquez, par. 7, TR. pp. 395, 396, sets forth the instructions of International President, Harry Bridges, as to what to do in such a case as arose on the "SS PRESIDENT QUEZON." The instruction was not to work the gear even if the arbitrator says it is safe.

Case Number 4 involved the SS MICHIGAN and is set forth in paragraphs 4 through 10 of the affidavit of Robert Carney (TR. pp. 416, 418) sets the matter forth. Gang No. 55 was dispatched to the "SS HAI HSIN" to start employment at 6:00 P.M. and was then sold and shifted to the "SS MICHIGAN" to fulfill their eight (8) hour guarantee. The affidavit sets forth the provision of the agreement allowing the shift to fulfill the eight (8) hour guarantee and how President, Harry Bridges, had explained that a shifted gang did not have to work beyond the eight-hour guarantee. The affi-

davit shows how, after previously having been informed to the contrary that, the gang was asked to work over and called replacements and that after some of the replacements had started to work that the replacements were refused and that Mr. Velasquez was driving winches and was one of the last to know of the request to work over.

The affidavit further shows that Gang No. 80 which was also working on the ship faced a similar situation, called replacements which were refused by their employer but no action was taken against Gang No. 80.

Case No. 5 involved the "SS PRESIDENT HAYES." Velasquez had a night off and was not present nor did he have anything to do with the matter. (TR. p. 405, pars. 35, 36)

Case No. 6 involved the "SS PRESIDENT McKINLEY." The only action Velasquez took was in following out the orders of the President of LOCAL 13 after the President had talked to the PMA representative. (TR. p. 405, pars. 33, 34)

Case No. 7 involved the "SS CALEDONIA STAR" and shows Velasquez's only involvement was to obtain a man as a replacement for the gang that was working short handed and that he then sent the gang back to work and defendant's superintendent refused the replacement and fired the gang. (Velasquez, pars. 27 and 28, TR. pp. 405, 406)

Case No. 8 involved the "SS MANKATO VICTORY." The only work stoppage involved was a result of the employer refusing to accept the winch driver, Mr. Molle, and to allow him to continue to work. Mr. Molle subsequently established his right to work and was

compensated by the employer for the employer's refusal to let him work on the night in question. (Valasquez, pars. 29 and 31, TR. pp. 406, 407)

Case No. 9 involved the "SS KOHKA MARU." The case refers to dock men and swingmen who were discharged by the employer. Prior to that time, similar disputes had arisen. Affiant had won each of such disputes and on each arbitration the manning scale for dockmen had been confirmed at eight (8) men. That by phone, at the time, the area arbitrator in substance told Velasquez to file a complaint against the employer and he would have no trouble with it. However, subsequently, the Coast Committee changed the manning scale to require only those deemed necessary by the employer and the subsequent change was used against Velasquez at the ex parte arbitration. (Velasquez, pars. 32, 33, TR. p. 407)

Case No. 10 involved the "SS ORNEFJELL" Velasquez received advice on how to handle the matter from the area arbitrator and followed the instructions. The Coast Labor minutes which were used against Velasquez and referred to in page 233 of the arbitration transcript (Exhibit 6-C) did not originate until some six (6) months after the ORNEFJELL matter. (Valesquez, pars. 19-27, TR. pp. 401, 406)

Case Number 11 did not actually involve the unloading of a ship; it only involved work done by teamsters on cargo which had already been unloaded. The issue was the ILWU-Teamster pact, not the Pacific Coast Longshore Agreement. The affidavit and the arbitration transcript, pages 240-248 (Ex. 6-C) each show that work was being carried on contrary to the pact and the written orders put out by the PMA's area

Manager, J. D. McEvoy, on May 2, 1963, a copy of which is attached to the affidavit. However, at the ex parte arbitration, a prior conflicting telegram, which had been superseded, was used as evidence. (Velasquez, Pars. 28-32, TR. pp. 403, 404) All Velasquez attempted to do was obtain compliance with Mr. McEvoy's own directive, Bulletin No. 38, which is attached to the affidavit as an exhibit. (TR p. 411)

Case No. 12 involved the "SS INDIA BEAR." The situation was created by the employer refusing to accept a replacement then attempting to work the gang short handed in violation of Section 3.223 of the Pacific Coast Longshore Agreement. The gang refused to continue to work short handed and Section 3.223 provided that such a refusal was not a violation of the agreement.

APPENDIX VI.

Evidence Re: Connivance, Conspiracy, Fraud, Corruption Undue Means.

The matters had this inception about April, 1960, pursuant to the request of an outgoing Vice-President, Velasquez forwarded letters go Citrus Shippers explaining problems which were no fault of LOCAL 13. Thereafter, both the PMA President, Paul St. Sure, and ILWU President, Harry Bridges, appared at the LOCAL 13 Executive Board Room and reprimanded Velasquez. Harry Bridges joined St. Sure in calling Velasquez down, even though the letters were not detrimental to the International (Exhibit 1, Velasquez, pars. 42 and 43, TR. p. 410)

Thereafter, and about August, 1960, the defendant, PMA, engaged in a course of conduct of harassing and coercing plaintiff LOCAL 13 into agreements against their will, the most effective being shutting the ports of Los Angeles and Long Beach down for 13 days in August, 1960, and diverting ships to other ports for unloading. (Exhibits 2, Johnston, par. 21, TR. pp. 431, 438).

Prior to the shut down of the port, all arbitration had been carried on through an independent arbitrator. That as a condition of being able to return to work, LOCAL 13 had to agree that a new arbitrator would be selected for the Southern California area. The agreement provided in part: "That *the parties* will promptly reach agreement on the selection of a new area arbitrator for the Southern California area." (emphasis added) The selection of the new area arbitrator was made by International President, Harry Bridges, and PMA Presi-

dent, Paul St. Sure, at the bar in the LaFayette Hotel, the person selected as the new area arbitrator was Germaine Bulcke. (Exhibit 2, pars. 38, 39, TR. p. 444).

During the shut down of the port, LOCAL 13 received no assistance from the International President, Harry Bridges, who, in fact, supported the employer's position and urged the signing of the agreement. (Exhibit 2, par. 47, TR. p. 448)

That since August, 1960, LOCAL 13 has had no choice in the selection of arbitrators. In November, 1964, Curt Johnston, President of LOCAL 13, attempted to obtain a different arbitrator as to have a matter heard which involved Johnston prior to his taking office. Johnston was refused on the basis that *the parties* to select the arbitrator were *Paul St. Sure* and *Harry Bridges* and no other. The refusal was conveyed to Johnston by the PMA's area manager, John McEvoy, who had taken the matter up with Harry Bridges and Paul St. Sure who were appearing together at a Symposium in Long Beach. (Exhibit 2, par. 40, TR. pp. 444, 445).

Both the area arbitrator, Germaine Bulcke, and the coast arbitrator, Sam Kagel, have been long-time friends of Harry Bridges, and both have been employed by the ILWU in positions subservient to Harry Bridges. Sam Kagel has been an acquaintance of St. Sure for a number of years, and both arbitrators obtained their jobs through Harry Bridges and Paul St. Sure. (Answer to Interrogatory No. 31, TR. p. 199).

That both Paul St. Sure and Harry Bridges were present at the area labor relations meeting at the Port of Los Angeles when LOCAL 13 was locked out in

August, 1960, but never appeared again at an area Labor Relations meeting at the port until they appeared together at the meeting of December 8, 1964. (Interrogatory No. 31, TR. pp. 199, 200).

In the interim, William Ward, Coast Committeeman and International official, stated to Velasquez that he heard that Velasquez was going to run for his job as a Coast Committeeman and showed his displeasure and was sarcastic about the matter. (Exhibit 1, Velasquez, par. 41, TR. pp. 409, 410).

William Ward, Howard Bodine and Harry Bridges are the three International officers who are the members of the Coast Committee; the remaining members are made up from the employers. During November, 1964, Johnston received a telephone call from William Ward referring to Velasquez as "Mickey Mouse". Ward asked Johnston if Mickey Mouse was still in his hair and thereafter said, "Have no worries son, we will take care of him up here." (Exhibit 2, Johnston, par. 3, TR. p. 432).

On December 2, 1954, the entirety of Gang No. 55 was put on the non-dispatch list over the "SS PRESIDENT QUEZON" matter, preventing them from being dispatched to Marine Terminals. The union filed its complaint for the firing of the gang from the "SS PRESIDENT QUEZON," the matter was heard in the Joint Port Labor Relations Committee and on December 3, 1964, the matter was referred to the Joint Area Labor Relations Committee. By past agreement and practice upon referral to the Joint Area Labor Relations Committee, all members of Gang No. 55 would come off the non-dispatch list. (Exhibit 2, Johnston, pars. 4-7, TR. p. 433).

On December 2, 1962, following the "SS QUEZON" matter, Mr. McEvoy of the PMA told Robert Carney that they were out to get Velasquez for the thing he had done as a Business Agent of the Union, the reason being that Velasquez knew the contract too well. (Exhibit 5, Carney, par. 22, TR. pp. 421, 422). During the time Velasquez was an official of plaintiff LOCAL 13, he engaged in and handled the labor disputes arising from performance of work under the contract. He won substantially all of these disputes, including substantially all of the arbitrations (Exhibit 1, Velasquez, Pars. 9 and 11, TR. pp. 397, 398).

That after the deregistration of Velasquez, Mr. McEvoy of the PMA stated that the decision to attempt to deregister an official of the ILWU was not a snap decision, but plenty of thought had been put into it and it had been considered over a long period of time prior to action having been taken. (Ans. Interrogatory No. 31, TR. p. 203)

Immediately after the matter was referred to the Area Labor Relations Committee, John McEvoy presented LOCAL 13 with a typewritten statement which he read, moving that Pete Velasquez be deregistered under Section 17.81 with 15 charges against Velasquez attached thereto, and with a typewritten statement which, in substance, blacklisted Velasquez from all employment of any of the employers under the Pacific Coast Longshore Agreement until such time all complaints against Pete Velasquez were resolved. LOCAL 13 objected that the blacklisting was a violation of the Pacific Coast Longshore Agreement and a violation of the law. (Exhibit 2, Johnston, pars. 8 to 10, TR. p. 434).

On December 3, 1964, the PMA implemented the blacklisting of Velasquez by a dispatch to the employers that they were not to accept Velasquez for employment and to fire Gang No. 55 if they objected. Never before had a member been put on a non-dispatch list to all employers. (Exhibit 2, Johnston, par. 14, TR. p. 435).

A special Area Labor Relations meeting was held December 8, 1964, at which ILWU President Harry Bridges and PMA President Paul St. Sure were present; this was their first attendance together since August, 1960. The August, 1960, appearance having been their first appearance together at Los Angeles Harbor since they chastised Velasquez in April, 1960. Paul St. Sure stated that to reinstate Velasquez that all the employer complaints against Velasquez, together with the motion to deregister him would have to be taken directly to the Coast Arbitrator and LOCAL 13 President, Curt Johnston, refused and requested that Velasquez be removed from the non dispatch list. Paul St. Sure said the proposal was inseparable and refused to remove Velasquez from the non dispatch list. Later, St. Sure proposed that the various complaints against Velasquez be handled in the Joint Labor Relations Committee and if necessary be presented to the area arbitrator and if thereafter necessary to the Coast Labor Relations Committee. St. Sure stated that if the respondent would not agree to the foregoing, that Velasquez would not be removed from the non dispatch list. (Exhibit 2, Johnston, Par. 20, TR. p. 437).

ILWU President, Harry Bridges, then stated to LOCAL 13 that St. Sure was a determined man and when he had taken a hard and fast position on an issue as he

had in the Velasquez matter, that St. Sure would possibly shut the ports of Los Angeles and Long Beach down rather than change his position. (Answer to Interrogatory 40, TR. p. 211, lines 24-29).

Due to the past coercion, harassment, and previous shutting down of the ports of Los Angeles and Long Beach, by the PMA and the fact that Harry Bridges would not assist LOCAL 13, Johnston agreed to the latter demands in the belief that the ports might again be shut down and to have Velasquez reinstated. (Exhibit 2, par. 22, TR. p. 438) (Exhibit 2, par. 55, TR. p. 450).

The matters subsequently went to arbitration and plaintiff refused to arbitrate Cases 8 through 12 which involved matters which allegedly occurred while Velasquez was a union official on the grounds that Section 17.81 did not include union officials and that the arbitration was against Federal and State laws, and the arbitrator was without jurisdiction to proceed. (Exhibit 2, Johnston, pars. 24, 25, 26, TR. pp. 438, 439) Johnston made it clear that his position was that the employer's move was illegal and coercive on the part of the PMA. (Exhibit 6-B, p. 178)

Prior to his arbitrating cases numbered 5 through 12 ex parte in attempting to induce Johnston to put up at least a token defense, the area arbitrator stated:

> "* * * but it would look better even though we both know Velasquez is guilty, and heaven knows I have tried to help the guy, if you would be there to at least go through the motion." (TR. p. 440)

The arbitrator thereafter proceeded ex parte in violation of Section 17.281 of the Pacific Coast Longshore

Agreement and the arbitrator rendered his decision. The decision was appealed to the Coast Labor Relations Committee and the Committee referred the matter to the coast arbitrator, Sam Kagel. (Exhibit 2, Johnston, pars. 30 to 33, TR. p. 441).

The matter of the blacklisting of Velasquez was finally arbitrated, and it was held that the blacklisting was in violation of Section 17.14 of the Pacific Coast Longshore Agreement and Velasquez was compensated for his loss of earnings. (Exhibit 2, Johnston, 38, TR. pp. 442, 443).

Subsequent to the award of the area arbitrator and prior to the award of the coast arbitrator, Bridges told Velasquez in an angry manner, that he was done, finished, and washed up, *if the issue of deregistration got to the coast arbitrator,* and that his only hope was he, Bridges, who was the only one who could save him, and Bridges finished the conversation by telling Velasquez, "You're through, you're all washed up." (Exhibit 2 Johnston, par. 45, TR. p. 447). (Ans. Interrogatory No. 31, TR. pp. 202, 203).

That at the time of the hearing before the coast arbitrator, Harry Bridges acquiesced in the employer position that Section 17.81 applied to union officials. (Exhibit 2, Johnston, par. 46, TR. p. 447) Bridges made the above statement even though the decision of the arbitrators was flagrantly against union principles and contrary to accepted union principles. (Answer to Interrogatory 31, TR. p. 203, lines 26-30) (Court Finding No. I, TR. p. 618)

That prior thereto, Section 17.81 had never been applied to union officials. That the Pacific Coast Longshore Agreement is ratified by the membership by secret

ballot, the matter of Section 17.81 applying to union officials had never been put to the vote of the membership. (Exhibit 2, Johnston, par. 46, TR. p. 447). In addition prior thereto in the past, many disputes had arisen over performance of the Pacific Coast Longshore Agreement and prior Business Agents had shut many jobs down and delayed many more vessels than Velasquez was charged with, and were never charged with any offense or penalized for such activities. (Exhibit 1, Velasquez, par. 10, TR. p. 397).

After the decision of the coast arbitrator, Sam Kagel, and during August, 1965, Sam Pucio had a conversation with Harry Bridges who told Pucio that they had two arbitrations going at the same time, and that they had a deal working on the belly-packing matter and the Velasquez case and that they had to sacrifice Velasquez to gain the belly-packing matter. The belly-packing award is attached to the affidavit and was issued the coast arbitrator and bears the same date as the decision deregistering Velasquez. (Exhibit 3, Pucio, TR. p. 424).

After the award of the Coast arbitrator, the area arbitrator called Johnston and stated what had happened, and he might as well accept it and suggested that Johnston try to negotiate a deal through Bridges where Velasquez would be reinstated as a Class "B" longshoreman and suggested some type of a deal where Velasquez would agree never to run for office again. (Exhibit 2, Johnston, par. 37, TR. pp. 443, 444).

After the Area Arbitrator's decision, a conversation took place with Robert Hall, an official of the PMA, who took part in contract enforcement and deregistration. Hall was confident that Velasquez would be deregistered as during the period of his employment at

San Francisco he had become familiar with the power of the joint parties regarding deregistration. Hall stated that when the parties wished to deregister someone, they meant business. He stated that on a prior occasion involving one Stanley Weir, who the parties thought was a threat to them, that to deregister Weir, that the parties had to select a list of 81 men to also be deregistered and sacrificed so as to get the one they wanted (Weir); and that he felt confident that if they would go that far, that Velasquez would certainly go. The term "joint parties" as used in the conversation was the ILWU and the PMA. The 81 men were Class "B" men who were terminated and denied employment without charges being brought against them. Weir had been a critic of Harry Bridges and the Pacific Coast Longshore Agreement. (Exhibit 2, Johnston, pars. 51 to 55, TR. pp. 449, 450)

The control of registration is important as it is a substantial means of alleviating by the joint parties any objections or opposition to any program, contract, or activity in which they wish to indulge. (Exhibit 2, Johnston, par. 49, TR. p. 449).

APPENDIX VII.

List of Exhibits.

Exhibit 1—Affidavit of Pete Velasquez

Exhibit 2—Affidavit of Curt Johnston

Exhibit 3—Affidavit of Sam Puccio

Exhibit 4—Affidavit of Patrick Leonard

Exhibit 5—Affidavit of Robert Carney

Exhibit 6-A—January 4, 1965 Transcript of Area Arbitration

Exhibit 6-B—January 5, 1965 Transcript of Area Arbitration

Exhibit 6-C—January 6, 1965 Transcript of Area Arbitration

Exhibit 7—Transcript of Coast Arbitration

Answers to interrogatories of plaintiff Local 13 received into evidence without number.

Receipt into evidence of all of the above matters is evidenced at pages 452 and 453 of the transcript.